

PROPOSED RULEMAKINGS

STATE BOARD OF CHIROPRACTIC

[49 PA. CODE CH. 5]

Licensure by Reciprocity

The State Board of Chiropractic (Board) proposes to amend § 5.13 (relating to licensure by reciprocity) to read as set forth in Annex A.

Effective Date

This proposed rulemaking will be effective upon final form publication in the *Pennsylvania Bulletin*.

Statutory Authority

This proposed rulemaking is authorized under sections 302(3) and 504 of the Chiropractic Practice Act (act) (63 P. S. §§ 625.302(3) and 625.504).

Background and Need for the Amendment

Section 504 of the act authorizes the Board to grant a license without further examination to an individual from another state or a province of Canada if: (1) the standards for licensing in that jurisdiction are substantially the same as those provided in the act; (2) that jurisdiction accords similar privileges to persons licensed in this Commonwealth; (3) the applicant holds a valid license in that jurisdiction; and (4) the applicant complies with applicable regulations of the Board. Under section 501(a) of the act (63 P. S. § 625.501(a)), the standards for licensure in this Commonwealth include graduation from an approved chiropractic school and passing the required licensure examinations, which as specified in § 5.12(a)(2) (relating to licensure by examination) are parts I, II, III and IV of the National Board Examination (NBE). Section 5.13(a) currently requires an applicant for licensure by reciprocity to have graduated from chiropractic school, passed clinical and written examinations acceptable to the Board, passed parts I and II of the NBE or another written licensure examination acceptable to the Board and hold a current and valid unrestricted license to practice chiropractic in another jurisdiction that meets the standard in section 504 of the act. Additionally, § 5.13(c) requires that the applicant "is currently engaged in active practice and has been so continually for at least 1 year immediately preceding the date of the application, in the [jurisdiction] of the license on the basis of which the applicant is seeking a license in this Commonwealth by reciprocity."

The standards for licensure have changed over time. For example, prior to 1992 the Board did not require an applicant to have passed part III of the NBE and before 1997 the Board did not require part IV of the NBE. Other states have similarly revised their standards for licensure. Section 504 of the act does not make clear whether the standards for licensure to be compared should be the current standards or those at the time the applicant was first licensed to practice chiropractic. The Board has received applications for licensure by reciprocity from out-of-State chiropractors who met the Pennsylvania standards at the time of graduation from chiropractic school and licensure in the other jurisdiction, but not the current standard. If the current standards are compared and the other state has not similarly added to its requirements, the applicant would not qualify. But if

the other state has similarly added to its requirements, the applicant would qualify for licensure in this Commonwealth. It does not seem appropriate to base the determination of whether an applicant is qualified for licensure upon changes in legal standards subsequent to that applicant demonstrating qualification for licensure to practice chiropractic that would have met the Pennsylvania standards at that time. Additionally, had the applicant chosen to apply for licensure in this Commonwealth in addition to or rather than the other jurisdiction at the time of first licensure, the applicant who then met the Pennsylvania standards would have become licensed and would still be permitted to practice in this Commonwealth despite the subsequent change in Pennsylvania standards. A system that bases the determination upon comparison of current standards may shut out an applicant who holds qualifications identical to those of Pennsylvania licensees who became licensed here first and are permitted to continue practicing.

Accordingly, the Board proposes to amend the regulation concerning licensure by reciprocity to base the determination upon the standards for licensure at the time of graduation from chiropractic school and first licensure, rather than the current standards.

Moreover, for ease of understanding and application of the regulation, the Board proposes to express those standards in terms of the applicant's qualifications, rather than directly comparing the jurisdiction's standards each time. While the Board can determine what its standards for licensure have been historically, it is difficult for the Board to determine the standards for licensure in another jurisdiction, especially with the moving target of standards at a particular time. Although the Board could put the burden on the applicant to demonstrate what the standards of licensure were at the time of licensure in another jurisdiction, it is doubtful that nonlawyer applicants in an administrative proceeding would be competent to meet that burden. The concept behind licensure by reciprocity is that because the applicant has already demonstrated that the applicant met standards that were substantially equal to the Pennsylvania standards, the applicant by definition had to have also met the standards for licensure in this Commonwealth. To take that another step further, if the applicant who met the Pennsylvania standards became licensed by examination in the other jurisdiction, the Board infers that the other jurisdiction's standards were substantially similar to the then-existing Pennsylvania standards. Expressing the requirements for licensure by reciprocity in terms of the applicant's qualifications in light of the historic Pennsylvania standards would make the process much simpler and straightforward and would put potential applicants on notice of what qualifications shall be demonstrated for licensure.

Description of the Proposed Amendments

The proposed rulemaking would first address the examinations required in § 5.13(a). Because the first two parts of the NBE have been the standard since 1968, § 5.13(a)(2) would be revised to make clear that alternative "clinical and written examinations acceptable to the Board" are required for those who graduated before 1968 and cannot rely on the NBE. Section 5.13(a)(3) would be revised to require successful completion of the NBE. Proposed § 5.13(a)(3)(i) would require parts I and II of the NBE for applicants who graduated after January 1, 1968. The Board first required successful completion of

part III of the NBE effective December 28, 1991. See 21 Pa.B. 5944 (December 28, 1991). Accordingly, proposed § 5.13(a)(3)(ii) would also require part III of the NBE for applicants who graduated or were first licensed after December 27, 1991. The Board first required successful completion of part IV of the NBE effective May 24, 1997. See 27 Pa.B. 2540 (May 24, 1997). Accordingly, proposed § 5.13(a)(3)(iii) would also require part IV of the NBE for applicants who graduated or were first licensed after May 23, 1997.

Currently, § 5.13(a)(4) requires the applicant to have “a current and valid unrestricted license to practice chiropractic in another state . . . whose standards for licensure are substantially equivalent to those required by the act and [Board regulations] for licensure and which accepts Pennsylvania licensees for licensure by reciprocity.” Because licensure by reciprocity is to avoid the need for additional examinations and relies upon the standards for licensure in the jurisdiction that licensed the applicant by examination, the proposed rulemaking would amend § 5.13(a)(4) to require that the license in the other jurisdiction have been obtained by examination. Because section 504 of the act requires only that the license in the other state be valid and not that it be “current and valid” and because an applicant for licensure by reciprocity may very well have also been practicing under a license by reciprocity in another jurisdiction subsequent to initial licensure, the proposed rulemaking would also delete from § 5.13(a)(4) the requirement that the license in the other jurisdiction be current. This does not eliminate the requirement that the license be valid, meaning that it is not suspended, revoked or otherwise restricted. Additionally, the phrase “which accepts Pennsylvania licensees for licensure by reciprocity” is intended to convey the requirement in section 504(2) of the act that “similar privileges [for licensure by reciprocity] are accorded persons licensed in this Commonwealth.” Because this phrase is not well understood and by itself does not convey the standards by which to do so, the Board proposes to replace it with the following: “which licenses by reciprocity chiropractors licensed in another jurisdiction whose standards for licensure are substantially equivalent to those required in that jurisdiction.”

Proposed § 5.13(a)(5) would include a minimum practice requirement. Current § 5.13(c) requires the applicant to submit an affidavit that the applicant “is currently engaged in active practice and has been so continually for at least 1 year immediately preceding the date of the application, in the [jurisdiction] of the license on the basis of which the applicant is seeking a license in this Commonwealth by reciprocity.” This provision was intended to assure some minimum level of experience, as well as to deter an applicant from too quickly fleeing one jurisdiction for another in a way that might avoid detection of professional misconduct. However, because it is reasonable for a practitioner to leave the jurisdiction of initial licensure, there is no reason to require that the applicant be actively practicing in that original jurisdiction as of the date of application here and for at least 1 year beforehand. Instead, proposed § 5.13(a)(5) would require only that the applicant has actively practiced in that jurisdiction for at least 12 months. Because a practitioner moving to a new jurisdiction may legitimately temporarily cease practicing, proposed § 5.13(a)(5) would require only that the applicant actively practice at least 20 months during the 24 months immediately preceding the date of application. Finally, because reciprocity in all practicality is for those practitioners who have been actively practicing, rather than newer gradu-

ates, proposed § 5.13(a)(5) would require that the applicant have been in active practice for at least 3 years. Current § 5.13(c) would be revised simply to provide that the applicant’s verified statement of active clinical practice of chiropractic is adequate evidence of that practice in meeting this requirement for licensure by reciprocity.

Applicants for licensure by examination are required under § 5.15(a)(2) (relating to licensure examinations) to complete the Pennsylvania Chiropractic Law Examination. Because this examination is not part of the NBE, proposed § 5.13(a)(6) would require an applicant for licensure by reciprocity to successfully complete the Pennsylvania Chiropractic Law Examination.

Current § 5.13(b) requires an applicant to complete an application “detailing the applicant’s education and experience” and submit that application “at least 30 days prior to the next Board meeting.” Because licensure by reciprocity also depends upon the applicant’s examination and licensure in other jurisdictions, this subsection would be amended to require “the applicant’s education, examinations, licensure and experience.” Additionally, because the Board staff reviews applications independent of Board meetings, there is no reason to impose the time restriction; therefore, the Board proposes to delete this clause.

Finally, current § 5.13(e) provides that the Board may require an interview with the applicant. Because the Board will review the application upon objective criteria and a provisional denial of the application entitles the applicant to appeal and request a hearing, this section is unnecessary. In its place, however, it is appropriate for the Board to explicitly note that an applicant for licensure by reciprocity, who by definition has been able to practice chiropractic in another jurisdiction, may be denied upon the grounds provided in section 506(a) of the act (63 P. S. § 625.506(a)), which provides that the Board may refuse to issue a license for any of a variety of enumerated reasons, including practice based reasons.

Fiscal Impact and Paperwork Requirements

The proposed rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will not impose additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

Sunset Date

The Board continuously monitors the effectiveness of its regulations. Therefore, a sunset date has not been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 6, 2011, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Professional Licensure Committee (HPLC) and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC). A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Regulatory Unit Counsel, Department of State, P. O. Box 2649, Harrisburg, PA 17105-2649, st-chiro@state.pa.us within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-4320 (licensure by reciprocity) when submitting comments.

JOSEPH T. GRICE, DC,
Chairperson

Fiscal Note: 16A-4320. No fiscal impact; (8) recommends adoption.

ANNEX A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 5. STATE BOARD OF CHIROPRACTIC

Subchapter B. LICENSURE, CERTIFICATION, EXAMINATION AND REGISTRATION PROVISIONS

§ 5.13. Licensure by reciprocity.

(a) An applicant for licensure by reciprocity shall present evidence of the following:

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(2) A passing score on clinical and written examinations acceptable to the Board, **if the applicant graduated from chiropractic college prior to January 1, 1968.**

(3) Passing scores on [**Parts I and II**] the following parts of the National Board Examination [**in the basic and clinical sciences or a passing score on a written licensure examination acceptable to the Board.**]:

(i) **Parts I and II if the applicant graduated from chiropractic college after January 1, 1968.**

(ii) **Part III if the applicant graduated from chiropractic college after December 27, 1991, or was first licensed to practice chiropractic after December 27, 1991.**

(iii) **Part IV if the applicant graduated from chiropractic college after May 23, 1997, or was first licensed to practice chiropractic after May 23, 1997.**

(4) [**A current and valid**] An unrestricted license to practice chiropractic **obtained by examination** in another state or territory of the United States or a province of Canada whose standards for licensure **by examination** are substantially equivalent to those required [**by**] under the act and this chapter for licensure and which [**accepts Pennsylvania licensees for licensure by reciprocity**] licenses by reciprocity chiropractors licensed in another jurisdiction whose standards for licensure are substantially equivalent to those required in that jurisdiction.

(5) **Having engaged in the active clinical practice of chiropractic under a license in another state or territory of the United States or a province of Canada for at least 3 years, including at least 20 months of the 2 years immediately preceding the date of application, and including at least 12**

months in the jurisdiction that issued the license described in paragraph (4).

(6) A passing score on the Pennsylvania Chiropractic Law Examination.

(b) The applicant shall complete an application obtained from the Board detailing the applicant's education, **examinations, licensure** and experience, and certifying that the applicant has met the requirements for licensure under the act and this chapter, and return the application and appropriate documentation to the Board with the required fee [**at least 30 days prior to the next Board meeting**].

(c) [**In addition to satisfying the educational and professional requirements listed in subsection (a), the licensee shall execute an affidavit certifying that the applicant is currently engaged in active practice and has been so continually for at least 1 year immediately preceding the date of the application, in the state, territory or province of the license on the basis of which the applicant is seeking a license in this Commonwealth by reciprocity.**] An applicant's verification that the applicant has engaged in the practice of chiropractic as required under subsection (a)(5) will satisfy the requirement that the applicant present evidence of experience.

* * * * *

(e) The Board may [**require that a personal interview be conducted with an applicant for licensure without restriction by reciprocity to ascertain the applicant's ability to practice with reasonable skill and safety to patients and the applicant's knowledge of the requirements of the act and this chapter and other pertinent health laws of the Commonwealth**] deny an application for licensure by reciprocity as provided in section 506(a) of the act (63 P. S. § 625.506(a)).

[Pa.B. Doc. No. 11-1597. Filed for public inspection September 16, 2011, 9:00 a.m.]

STATE BOARD OF DENTISTRY

[49 PA. CODE CH. 33]

Expanded Function Dental Assistant Scope of Practice and Continuing Education

The State Board of Dentistry (Board) proposes to amend §§ 33.205a and 33.402 (relating to practice as an expanded function dental assistant; and continuing education subject areas) to read as set forth in Annex A.

Effective Date

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

Statutory Authority

The proposed rulemaking is authorized by section 4 of the act of April 29, 2010 (P. L. 176, No. 19) (Act 19), which requires the Board to promulgate regulations within 18 months of its effective date (June 28, 2010), and section 3(d.1), (j) and (o) of The Dental Law (act) (63

P. S. § 122(d.1), (j) and (o)), which authorizes the Board to regulate expanded function dental assistants and continuing education and to promulgate regulations as may be deemed necessary and proper by the Board to carry into effect the powers conferred by the act.

Background and Purpose

Act 19 amended the act to expand the scope of practice of expanded function dental assistants to include performing coronal polishing, performing fluoride treatments and taking impressions of teeth for limited purposes. This proposed rulemaking would amend § 33.205a to conform to the amendments made by Act 19. Additionally, the Board is concerned that many existing expanded function dental assistants may have not had training in the area of coronal polishing. Therefore, the Board proposes to require expanded function dental assistants, with the exception of those who are also licensed dental hygienists, to complete 3 hours of continuing dental education in the area of coronal polishing during the next biennial renewal cycle.

Description of Proposed Amendments

The Board proposes to amend § 33.205a to include coronal polishing, fluoride treatments and taking impressions within the scope of practice of expanded function dental assistants that are certified by the Board. The Board also proposes to amend § 33.402 to require expanded function dental assistants certified by the Board to complete 3 hours of continuing dental education in the area of coronal polishing during the next renewal cycle. Existing expanded function dental assistants will be required to comply by completing the 3 hours in coronal polishing during the April 1, 2011, to March 31, 2013, renewal period. Because they are exempt from continuing education during the biennial renewal cycle in which they pass the certification exam and are initially certified, newly certified expanded function dental assistants will be required to complete the 3 hours in coronal polishing during the first renewal cycle after initial certification. This 3-hour requirement may not be met by online or distance education but shall be completed by physical attendance at a clinical training program provided by an approved continuing education program sponsor. The Board also proposes to provide an exception to this requirement for licensed dental hygienists who also hold certification as expanded function dental assistants.

Fiscal Impact and Paperwork Requirements

The proposed rulemaking should not have fiscal impact on the Commonwealth or its political subdivisions or on the regulated community.

The proposed rulemaking should not result in additional legal, accounting or reporting requirements for the Commonwealth or the regulated community.

Sunset Date

The Board continuously monitors the cost effectiveness of its regulations. Therefore, a sunset date has not been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 6, 2011, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Professional Licensure Committee (HPLC) and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC). A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to Cynthia Montgomery, Regulatory Counsel, State Board of Dentistry, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking.

PHILIP T. SIEGEL, D.D.S.,
Chairperson

Fiscal Note: 16A-4624. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 33. STATE BOARD OF DENTISTRY

Subchapter C. MINIMUM STANDARDS OF CONDUCT AND PRACTICE

§ 33.205a. Practice as an expanded function dental assistant.

(a) *Scope of professional practice.*

(1) An expanded function dental assistant may offer to perform or perform the following services:

* * * * *

(vii) Placing and finishing composite resin restorations [**and/or**] or sealant material, or both.

(viii) **Performing coronal polishing.**

(ix) **Performing fluoride treatments, including fluoride varnish.**

(x) **Taking impressions of teeth for study models, diagnostic casts or athletic appliances.**

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(b) *Prohibitions.* An expanded function dental assistant may not **perform the following procedures:**

(1) [**Examine, diagnose or plan treatment**] **Complete or limited examination, diagnosis and treatment planning.**

(2) [**Cut**] **Surgical or cutting procedures of hard or soft tissue.**

(3) [**Prescribe**] **Prescribing drugs, medicaments or [lab] work authorizations.**

(4) [**Approve the final occlusion**] **Final inspection and approval of restorative and other treatment which affects occlusion and necessary occlusal adjustments.**

(5) [**Perform pulp**] **Pulp** capping, pulpotomy and other endodontic procedures.

(6) [**Perform final placement/cementation**] **Placement and intraoral adjustments** of fixed and removable prosthetic appliances.

(7) [**Administer**] **Administration** of local anesthesia, parenteral or inhalational sedation, nitrous oxide analgesia or general anesthesia.

(8) Take impressions other than for study models [**or**], diagnostic casts **or athletic appliances**.

(c) *Supervision.* Expanded function dental assistants shall perform under the direct supervision of a dentist. Direct supervision means that a dentist is in the dental office or treatment facility, personally diagnoses the condition to be treated, personally authorizes the procedure and remains in the dental office or treatment facility while the procedure is being performed by the expanded function dental assistant, and, before dismissal of the patient, **personally** evaluates the work performed by the expanded function dental assistant.

Subchapter F. CONTINUING DENTAL EDUCATION
§ 33.402. Continuing education subject areas.

* * * * *

(g) **Expanded function dental assistants shall comply with the following:**

(1) **An expanded function dental assistant certified by the Board by March 31, 2011, shall complete 3 of the 10 required hours of continuing education during the biennial renewal period of April 1, 2011, to March 31, 2013, in the area of coronal polishing.**

(2) **An expanded function dental assistant certified by the Board after March 31, 2011, shall complete 3 of the 10 required hours of continuing education during the first complete biennial renewal cycle after initial certification in the area of coronal polishing.**

(3) **The requirements in this subsection may not be met through online or distance education. The requirements in this subsection shall be completed by physical attendance at a clinical training course offered by an approved program sponsor.**

(4) **The requirements in this subsection do not apply to licensed dental hygienists who also hold certification as expanded function dental assistants.**

[Pa.B. Doc. No. 11-1598. Filed for public inspection September 16, 2011, 9:00 a.m.]

STATE BOARD OF PHYSICAL THERAPY

[49 PA. CODE CH. 40]

Act 38 of 2008 Amendments

The State Board of Physical Therapy (Board) proposes to amend §§ 40.1, 40.5, 40.11, 40.12, 40.14, 40.17, 40.53, 40.61, 40.63, 40.152, 40.161—40.164, 40.171, 40.181 and 40.191, delete § 40.62 and add §§ 40.19, 40.20, 40.67—40.69, 40.165, 40.166, 40.173, 40.192 and 40.193 to read as set forth in Annex A.

Effective Date

The proposed rulemaking will be effective upon final publication in the *Pennsylvania Bulletin*.

Statutory Authority

The amendments are authorized under section 3(a) of the Physical Therapy Practice Act (act) (63 P. S. § 1303(a)).

Background and Need for the Amendment

The act of July 4, 2008 (P.L. 293, No. 38) (Act 38) substantially amended the act, including qualifications for licensure as a physical therapist, continuing education for physical therapists and physical therapist assistants, professional liability insurance for physical therapists, physician referral and supervision of physical therapist assistants by physical therapists on a basis that may be less than direct on-premises supervision. The extensive nature and breadth of these amendments requires that the Board amend its regulations to implement Act 38.

Description of the Proposed Amendments

Qualifications for licensure as physical therapist

Current § 40.11 (relating to educational requirements for licensure by examination) requires an applicant to have graduated from a physical therapy program accredited by the Commission on Accreditation in Physical Therapy Education (CAPTE). Act 38 amended section 6(a) of the act (63 P. S. § 1306(a)) to provide that an applicant for licensure who completed the professional study of physical therapy after 2002 shall hold a minimum of a master's degree from a regionally accredited institution of higher education. Accordingly, the Board proposes to add subsection (b) to § 40.11 to require a master's degree. Additionally, the Board proposes including in proposed § 40.11(b) similar requirements for those completing professional study prior to 2002 using the standards that arise from required CAPTE accreditation: an applicant completing the professional study of physical therapy between January 1967 and December 2002 shall hold a minimum of a bachelor's degree in physical therapy from a regionally accredited institution of higher education or the combination of a bachelor's degree from a regionally accredited institution of higher education and a post-baccalaureate certificate in physical therapy. Additionally, the Board proposes moving the contents of existing § 40.11 into proposed § 40.11(a) and revising that subsection to allow that there might be National accrediting bodies other than the CAPTE and excluding foreign-educated physical therapists from this requirement, as foreign-educated applicants are specifically addressed in § 40.17 (relating to foreign-educated physical therapists applying to take the licensure examination and pursue a clinical experience). Because this section is specific to educational requirements, the Board also proposes revising the heading to reflect that these are the educational requirements for licensure by examination.

Section 40.12(a) (relating to application for licensure) includes the requirements for licensure, referring to § 40.11. However, § 40.12 does not explicitly include the requirement to apply for licensure and pay the necessary fee. The Board proposes to add subsection (b) to require application on board forms and subsection (c) to require payment of the fee specified in § 40.5 (relating to fees).

Act 38 amended section 6(c) of the act to reduce from 6 months to 60 days the time after failing the licensure examination that an applicant shall wait to retake the exam and reducing from 2 years to 1 year the time in

which an applicant may retake the exam. Accordingly, the Board proposes to amend § 40.14(a) (relating to examination; failure; reexamination) to reflect these time periods. Additionally, Act 38 amended section 6(c) of the act to provide that an applicant may take the licensure examination no more than three times in a consecutive 12-month period. The Board proposes to add § 40.14(d) to incorporate this limitation.

Section 6(f) of the act previously authorized the Board to license foreign-trained physical therapists of appropriate age, good moral character, without addiction, who have completed educational requirements substantially equal to those of the act, passed the licensure examination and, in the Board's discretion, have completed a supervised clinical program of up to 1 year. Act 38 amended this section to delete the provisions except the discretionary clinical experience. In place of those deleted provisions, Act 38 added section 6(i) of the act to require that a foreign-educated applicant applies and pays the appropriate fee, the applicant holds an unrestricted license in the country where the applicant was educated, the applicant's education is substantially equivalent to the education generally required for licensure (either similarly accredited or based upon a credentials evaluation the recognized program preparing applicants to practice physical therapy is found to be equivalent with or without additional education) and the applicant passes the licensure examination. To implement these changes, the Board proposes to amend § 40.17 as follows: amend paragraph (1) to require the applicant to apply and pay the fee; amend paragraph (2) to require the applicant to provide documentation that the applicant has graduated from a physical therapist education program that prepares the applicant to engage without restriction in the practice of physical therapy (in addition to the existing requirement that the school is recognized by the authorizing agency of that jurisdiction); delete paragraph (3), which required the applicant to provide documentation that the applicant was authorized to practice physical therapy without limitation in that country; and amend paragraph (5) to require satisfactory evidence by means of credentials evaluation that the applicant's education is substantially equivalent to the education of physical therapists in accredited programs in this country. Because the CAPTE accreditation standards have changed, the Board also proposes amending § 40.17(5) to specify that if the applicant completed the program before 1998, the applicant shall have completed the currently-specified at least 120 semester hours with at least 42 credit hours in general education subjects and at least 69 credit hours in professional education subjects; if completed in 1998 or later, the applicant shall have at least 150 semester hours with at least 60 credit hours in general education and at least 90 credit hours in professional education subjects. The Board also proposes to amend paragraph (7) to provide that the clinical experience is always required, but is intended to correct a deficiency in the foreign-trained applicant's clinical education or experience. In addition, due to the deletion of paragraph (3), subsequent paragraphs would be renumbered.

Renewal of license or certification

In considering the required qualifications for licensure, as well as the impact of required continuing education and professional liability insurance, it became apparent that the Board's regulations do not currently address license renewal or reactivation. Accordingly, the Board proposes to add §§ 40.19 and 40.20 (relating to renewal of physical therapist license; and inactive status of physical therapist license). Proposed § 40.19(a) would acknowl-

edge the current practice that each license expires on December 31 of each even-numbered year. Proposed § 40.19(b) would set forth the standard provision that the licensee shall notify the Board of a change in address and that, because the Board will send notices to the last address provided by a licensee, the licensee's obligation to renew the license is not avoided by the Board's failure to send renewal forms or the licensee's failure to receive them. Proposed § 40.19(c) would set forth the following requirements for renewal: the licensee shall apply for renewal and pay the renewal fee, disclose any license to practice elsewhere, disclose any disciplinary actions or pending charges in another jurisdiction, disclose any criminal convictions or pending criminal charges, verify that the licensee has complied with the continuing education requirements and verify that if practicing in this Commonwealth the licensee carries the required professional liability coverage. Proposed § 40.20(a) would provide that a license will become inactive upon either the licensee's request or the licensee's failure to renew. Under proposed § 40.20(b), a licensee whose license is inactive may not practice as a physical therapist in this Commonwealth until the license is reactivated. A licensee seeking to reactivate a license shall apply on Board forms and provide documentation of continuing education, pay the current renewal and reactivation fees and verify that the licensee did not practice in this Commonwealth while the license was inactive as set forth in proposed § 40.20(c). Proposed § 40.20(d) would require a licensee who practiced while inactive or otherwise cannot make the verification of nonpractice to pay the renewal fee for periods in which the licensee practiced and a late fee of \$5 per month, as set forth in section 225 of the Bureau of Professional and Occupational Affairs Fee Act (63 P.S. § 1401-225). Finally, to better assure continued competence to practice, proposed § 40.20(e) would provide that to reactivate a license that has been inactive for more than 5 years the licensee shall either successfully complete the licensure examination or qualify for licensure by endorsement having practiced for at least the last 5 years in another jurisdiction.

Section 40.191 (relating to renewal of certification) addresses renewal by a physical therapist assistant. Similar to proposed § 40.19(c), the Board proposes to amend § 40.191(c) to require a physical therapist assistant applying for renewal of the certificate to complete the application and pay the required fee, disclose any license to provide services as a physical therapist assistant in another jurisdiction, disclose any disciplinary actions or pending charges, disclose any criminal convictions or pending criminal charges and verify that the certificateholder has complied with the continuing education requirements. The Board also proposes to amend § 40.191(g) to address reactivation similar to § 40.20(c) by requiring a physical therapist assistant seeking to reactivate a certificate to apply on Board forms and provide documentation of continuing education, pay the current renewal and reactivation fees and verify that the certificateholder did not provide services as a physical therapist assistant in this Commonwealth while the certificate was inactive. Similar to proposed § 40.20(d), proposed § 40.191(h) would require a certificateholder who provided services while inactive or otherwise cannot make the verification of nonpractice to pay the renewal fee for all periods in which the certificateholder provided services and a late fee of \$5 per month as set forth in section 225 of the Bureau of Professional and Occupational Affairs Fee Act. Similar to proposed § 40.20(b), the Board proposes to amend § 40.191(j) to provide that a certified physical therapist assistant may not provide

services while the certificate is inactive, doing so will subject the physical therapist assistant to disciplinary action.

Physician referral

In general, a physical therapist may provide physical therapy services upon referral of a physician or of a dentist or podiatrist within the scope of those professions. Act 38 amended section 9(a) of the act (63 P. S. § 1309(a)) to expand the list of those who may refer a patient for physical therapy to include a certified registered nurse practitioner and a physician assistant. Accordingly, the Board proposes to amend § 40.61 (relating to certificate of authorization to practice physical therapy without a referral) to include these additional practitioners.

Under the act prior to Act 38, only those physical therapists holding a certificate of authorization to practice without a physician referral were required to maintain professional liability insurance. As discussed as follows, physical therapists are now required to maintain professional liability insurance. Accordingly, the Board proposes to delete now-superfluous § 40.62 (relating to professional liability insurance).

Prior section 9(c) of the act required direct access certificateholders to complete at least 20 hours of continuing physical therapy education, including at least 10 hours in appropriate evaluative procedures to treat an individual without referral, for each renewal of the certificate of authorization to treat without a referral. Act 38 increased this requirement to 30 hours and prohibited education in office management or practice building. The Board proposes amending existing § 40.63(b) (relating to continuing education for direct access certificateholder) to include this increased requirement.

Under the act prior to Act 38, only those physical therapists holding a certificate of authorization to practice without a physician referral were required to complete continuing education. As discussed as follows, physical therapists are now required to complete continuing education. Accordingly, the Board also proposes adding § 40.63(i) to provide that hours of continuing education applied to satisfy the obligation for direct access certificateholders may also be applied to satisfy the general continuing education requirement for all physical therapists.

Professional liability insurance for physical therapists

Act 38 added section 9(b)(4)(iii.1) of the act to require a licensee practicing in this Commonwealth to maintain a level of professional liability insurance coverage in the minimum amount of \$1 million per occurrence or claims made with coverage provided through self-insurance, personally purchased liability insurance or professional liability insurance provided through the physical therapist's employer or similar group. Accordingly, the Board proposes to add § 40.69 (relating to professional liability insurance) and repeat those requirements in subsection (a). In accordance with section 9(b)(4)(iii.2) of the act, proposed § 40.69(b) would allow that, although proof is generally a certificate of insurance or a copy of the declarations page of a policy, an applicant could submit a letter from an insurance carrier indicating that it will provide coverage upon issuance of a license; in accordance with section 9(b)(4)(iii.3) of the act, proposed § 40.69(b) would also provide that a license would become inactive if proof is not provided within 30 days. Because carrying liability insurance is a condition of practice rather than of licensure, the Board proposes to include § 40.69(c) to make clear that a licensee who fails to maintain coverage while practicing is subject to disciplinary action.

Continuing education for physical therapists and physical therapist assistants

Act 38 added section 7.2 of the act (63 P. S. § 1307.2) to require physical therapists to complete at least 30 hours of continuing physical therapy education during each 2-year renewal period. The Board proposes adding §§ 40.67 and 40.68 (relating to continuing education for licensed physical therapist; and continuing competence for licensed physical therapist) to implement this new continuing education requirement.

Proposed § 40.67(a) would set forth the general requirement that, unless waived by the Board for good cause, a licensee complete at least 30 contact hours of continuing physical therapy education during each renewal period, credits may not be carried over and credits may be applied only during the period in which they were earned, except to reactivate a license or ordered by the Board in a disciplinary action. A "contact hour" would be defined in § 40.1 (relating to definitions) as 60 minutes of participation and a semester credit would be equal to 15 contact hours. Failure to complete continuing education subjects the licensee to disciplinary action. Under proposed § 40.67(b), completion would be shown by a certificate of completion issued by the provider with the licensee's name, the provider's name, date of the course, name of the course, any Board-issued approval number and the number of contact hours. The licensee shall retain proof for 5 years and the Board will audit licensees to verify compliance. As provided in proposed § 40.67(c), credit would be permitted only in courses from pre-approved or approved providers, in an appropriate subject matter (not including office management or practice building), no more than once in a renewal period for substantially the same course, but a licensee who teaches may receive attendance credit and additional credit for preparation up to the amount of credit a licensee could earn simply for attending.

Proposed § 40.67(d) would address approval of continuing education courses. Consistent with regulations the Board has separately promulgated for direct access physical therapists, proposed § 40.67(d)(1) would recognize as preapproved providers the American Physical Therapy Association (APTA), the Federation of State Boards of Physical Therapy (FSBPT), physical therapy programs accredited by the CAPTE and any other provider who applies and is approved by the Board, subject to termination for cause. So long as the course is in appropriate subject matter and otherwise complies, additional approval is not necessary for these providers. Under proposed § 40.67(d)(2), any other provider may apply for course approval by submitting the application at least 60 days in advance on the Board form with all documentation and the required fee. (This is the current practice for providers of continuing education for direct access physical therapists.) The application could cover a single course or a coordinated course of study, though material changes would have to be approved by the Board. The Board may disapprove courses that do not meet the standards and may terminate approval when false or misleading statements were made on the application or it is later discovered that grounds exist to disapprove the course. The Board will maintain a list of courses it has approved and make that list accessible to the public. To accommodate those licensees who might take continuing education through a course that, due to factors such as location or small market, the provider has not separately sought approval, the Board will permit a licensee who plans to attend the course to seek approval. Proposed § 40.67(d)(3) would set forth the provider's responsibility

ties: disclosing in advance to prospective attendees the objectives, content, teaching method and number of hours of continuing education; providing physical facilities adequate for the number of anticipated attendees; providing accurate instructional materials; utilizing qualified instructors who are knowledgeable in the subject matter; evaluating the program through the use of questionnaires of participants and instructors; issuing a certificate of completion to each participant; and retaining attendance records, written outlines and a summary of evaluations for 5 years.

Because sitting in lecture courses and other traditional methods to obtain information are not the only viable methods of assuring that licensees remain competent to practice, the Board is proposing to include what is often referred to as continuing competence in the array of methods for licensees to satisfy the continuing education requirement. This model is based upon the model currently being pursued by the FSBPT. Proposed § 40.67(e) would provide that, because continuing education is a structured process of education beyond professional entry-level education that is applicable to the practice of physical therapy and is designed or intended to support the continuous development of physical therapists and to maintain and enhance their professional competence, a licensed physical therapist may earn up to 15 hours of required continuing education in each period through continuing competence activities that do not otherwise qualify under the requirements if the activity is approved by the Board. In applying the continuing competence provisions, proposed § 40.68(a) would guide the Board by the following principles: continuing competence should be self-directed by the physical therapist; evaluation or assessment of current competence is critical for the physical therapist and the results of an evaluation or assessment should be used by the physical therapist to then select appropriate development activities; and physical therapists should have a wide variety of activities available to demonstrate their competence, rather than any single "right way." To obtain credit for continued competence activities, proposed § 40.68(b) would require the licensee to apply on Board forms and fully document the activity, including professional certification as appropriate. In determining whether to approve an activity, proposed § 40.68(b) would guide the Board by the following standards: content within the continuing competence activity must be relevant to the physical therapy profession and the designated audience; the continuing competence activity must foster the participant's learning and professional engagement through reflection, interaction, participation and contribution; the continuing competence activity must incorporate, reflect and promote the use of evidence-based practice (patient values, available evidence and clinician experience) or be based on current regulations; qualified individuals with appropriate subject matter expertise and credentials shall develop and, when applicable, conduct the continuing competence activity; the continuing competence activity must include behavioral objectives that encompass the content of the activity and promote a high level of learning in one or more of the cognitive, psychomotor and affective domains; the design of the activity must support the achievement of the objectives; each continuing competence activity must include objective methods to assess the participant's attainment of the specified activity outcomes; there must be mechanisms in place for ongoing review and evaluation of the quality and the effectiveness of the continuing competence activity and the activity shall be modified based on information gained from review and evaluation; the continuing competence provider shall furnish clear, complete

information to potential learners about continuing competence activities regarding administrative details, activity specifics and content, biography of the activity deliverer/presenter and participant requirements; and the continuing competence provider shall have established processes for developing, administering and documenting the continuing competence activity.

Proposed § 40.68(c) would establish the standards for amounts of continuing education credit that could be awarded for continuing competence activities. A licensee who completes a fellowship conferred by an organization credentialed by the APTA in a specialty area of physical therapy practice would earn 10 hours for each full 12-month period of fellowship to be credited in the renewal cycle of completion of the fellowship. A licensee who completes a residency program in physical therapy offered by an APTA credentialed organization would earn 10 contact hours for each full 12-month period of clinical participation, to be credited in the renewal cycle of completion of the residency program. A licensee who completes specialty certification or specialty recertification by the American Board of Physical Therapy Specialization or its successor organization would receive 15 contact hours upon receipt of certification or recertification to be credited in the renewal cycle of certification or recertification. A licensee who takes the practice review tool of the FSBPT would receive 5 contact hours and a licensee who passes the practice review tool would receive an additional 5 contact hours. A licensee who participates in other activities evaluated and approved by the FSBPT would receive the number of continuing education units set by the FSBPT with each continuing education unit worth 10 contact hours of credit. A licensee who becomes a credentialed Clinical Instructor or a Credentialed Clinical Instructor Trainer as recognized by the APTA would receive 1 contact hour for each hour of coursework required to receive the credential, not to exceed 15 contact hours, to be credited in the renewal cycle during which the credential was issued. A licensee who submits a request to a funding agency for a research grant as a principal or coprincipal investigator would receive 10 contact hours and for an award would receive an additional 10 contact hours. A licensee who serves as a grants reviewer would receive 1 contact hour for every 2 hours of review up to a maximum of 5 contact hours in a single renewal cycle. A licensee who authors or edits a book dealing with a subject regarding the practice of physical therapy would receive an amount of credit determined by the Board not to exceed 15 contact hours to be awarded in the renewal cycle in which the book was published. A licensee who authors or edits a chapter of a book dealing with a subject regarding the practice of physical therapy would receive an amount of credit determined by the Board not to exceed 10 contact hours to be awarded in the renewal cycle in which the book was published. A licensee who authors a published peer-reviewed article regarding the practice of physical therapy would receive an amount of credit determined by the Board not to exceed 10 contact hours to be awarded in the renewal cycle in which the article was published. A licensee who authors a published non-peer-reviewed article regarding the practice of physical therapy would receive an amount of credit determined by the Board not to exceed 5 contact hours to be awarded in the renewal cycle in which the article was published. A licensee who completes a professional self-assessment that is a process for the licensee to evaluate current professional practice ability, establish goals to improve those abilities, develop a plan to meet those goals and document that the objectives are being accomplished would receive an amount of credit determined by the

Board not to exceed a total of 5 contact hours in a single renewal cycle. A licensee who participates in a National physical therapy or interdisciplinary (including physical therapy) organization as an officer or chair of a physical therapy services committee or physical therapy services task force member for at least 1 year would receive 5 contact hours for each full year of participation. A licensee who participates in a State physical therapy or interdisciplinary (including physical therapy) organization as an officer or chair of a physical therapy services committee for at least 1 year would receive 5 contact hours for each full year of participation. A licensee who participates in a local physical therapy or interdisciplinary (including physical therapy) organization as an officer or chair of a physical therapy services committee for at least 1 year would receive an amount of credit determined by the Board not to exceed 5 contact hours in a single renewal cycle. A licensee who participates in a physical therapy professional organization committee involved with physical therapy services for at least 1 year would receive an amount of credit determined by the Board not to exceed 5 contact hours in a single renewal cycle. A licensee who engages in another continuing competence activity approved by the Board would receive an amount of credit to be determined by the Board.

Act 38 added section 9.1(j) of the act (63 P. S. § 1309.1(c)(4)) to require physical therapist assistants to complete at least 30 hours of continuing physical therapy education for each certificate renewal. Accordingly, the Board proposes similar continuing education provisions for physical therapist assistants in §§ 40.192 and 40.193 (relating to continuing education for certified physical therapist assistant; and continuing competence for certified physical therapist assistant). However, physical therapy assistants would not be able to participate in certain activities available to physical therapists, such as a fellowship, residency or specialty certification. A physical therapist assistant who receives advanced proficiency designation by the APTA would receive 15 contact hours to be credited in the renewal cycle during which the physical therapist assistant was designated.

Qualifications of physical therapist assistants

Act 38 amended the act to provide that physical therapist assistants are certified rather than registered. The Board has proposed replacing this language throughout Chapter 40.

Section 9.1(a) of the act previously required a physical therapist assistant to be at least 20 years of age unless otherwise determined by the Board. Existing § 40.162(a)(1) (relating to application for certification) requires an applicant to be at least 20 years of age, unless otherwise determined by the Board that the applicant has proved the capability to accept and handle the responsibilities appurtenant to registration. Act 38 reduced this statutory minimum age to 18 years of age. Physical therapist assistant programs are typically 2 years long and are begun after completing high school. Very few applicants will be less than 20 years old. The Board proposes to amend § 40.162(a)(1) to require that, unless at least 20 years of age, an applicant who is at least 18 years of age shall have proved to the Board the capability to accept and handle the responsibilities appurtenant to certification.

As discussed as follows, Act 38 amended the act to permit a physical therapist assistant, in certain situations, to provide services under supervision by a physical therapist that is less than direct on-premises supervision. To better describe the requirements, the Board proposes

adding to § 40.152 (relating to definitions) a definition of "indirect supervision" to mean supervision of a physical therapist assistant by a physical therapist that is not direct on-premises supervision as authorized by section 9.1(c) of the act. Section 9.1(c)(4) of the act provides that a physical therapist assistant shall remain under the direct on-premises supervision of a physical therapist until being approved by the Board, based upon certain experience. Accordingly, the Board proposes to add § 40.165 (relating to authorization to provide services as physical therapist assistant under indirect supervision). Proposed § 40.165(a) would provide that an applicant for a certificate of authority to provide services as a physical therapist assistant under indirect supervision shall submit an application on Board forms, together with necessary supporting documentation and the required fee. The Board proposes to amend § 40.5 to provide that the application fee for initial application for certification to provide services under indirect supervision would be \$30, based upon an estimate of the cost to the Board to process the application. Proposed § 40.165(b) would provide the standard for approving the application by requiring that the applicant demonstrate qualification for certification as a physical therapist assistant, demonstrate compliance with section 9.1(c)(4) of the act and otherwise comply with the Board's regulations. Proposed § 40.165(b)(2)(i) would require that the applicant provide verification from prior supervising physical therapists that the applicant has at least 2,000 hours of experience providing patient-related services under the supervision of a licensed physical therapist, as required under section 9.1(c)(4)(i) of the act. Proposed § 40.165(b)(2)(ii) would alternatively permit the applicant to provide documentation verifying that the applicant worked as a physical therapist assistant for at least 3 years between October 2, 2003, and October 2, 2008, the 5-year period immediately preceding the effective date of section 9.1(c)(4) of the act, as required under section 9.1(c)(4)(ii) of the act. The documentation would be by a detailed resume or other adequate documentation to corroborate the verification, and part-time work in that permitted time period would be acceptable if it is equivalent to at least 3 years of full-time work.

Act 38 added section 9.1(a.1) of the act to allow for temporary certification as a physical therapist assistant, limited to providing services only under the direct on-premises supervision of a licensed physical therapist, by an individual who meets the requirements for certification except the examination. The temporary certificate is good for up to 6 months, but expires upon failure of the examination. To implement this new classification, the Board proposes adding § 40.166 (relating to temporary certificate to provide services as physical therapist assistant). Similar to other license classifications, proposed § 40.166(a) would require the applicant to apply on Board forms, provide necessary documentation and pay the fee. Proposed § 40.166(b) would provide that the Board will grant the certificate to an applicant who satisfies the requirements in section 9.1(a.1) of the act, has applied for a regular certificate, has not previously sat for the certification examination, has not previously received a temporary certificate and otherwise complies with the regulations. However, under proposed § 40.166(c), the Board could rescind a temporary certificate if the applicant provided fraudulent information. Proposed § 40.166(d) would repeat the statutory requirement that the temporary certificate expires after 6 months or failure of the examination and become void upon receiving a regular certificate. Proposed § 40.166(e) would provide that the temporary certificate cannot be extended or renewed, and

proposed § 40.166(f) would provide that the holder of a temporary certificate may provide services only under the direct on-premises supervision of a licensed physical therapist.

Supervision of physical therapist assistants

Previously, section 9.1(c) of the act required that a physical therapist assistant perform patient-related physical therapy acts and services under the direct on-premises supervision of a licensed physical therapist. Act 38 amended this provision to require that the physical therapist supervise the physical therapist assistant and provided that the required level of supervision is a function of a number of factors, including the practice setting. To incorporate this amendment, the Board first proposes amending § 40.1 to revise the definition of "direct on-premises supervision" to match the new statutory definition in section 2 of the act (63 P. S. § 1302) to mean the physical presence of a licensed physical therapist in the facility, including affiliated buildings in immediate proximity, who is immediately available to exercise supervision, direction and control.

The Board also proposes adding § 40.173 (relating to supervision of physical therapist assistant by licensed physical therapist) to set forth the standards of supervision. Because the statutory standards for supervision are complex, the Board believes that it should repeat those statutory standards along with its regulatory standards in proposing regulations regarding supervision of physical therapist assistants. Accordingly, proposed § 40.173(a) would set forth the general rule from section 9.1(c) of the act that a physical therapist assistant may provide patient care services only under the supervision of a licensed physical therapist. Because direct on-premises supervision has always been the standard and is the most conservative approach, proposed § 40.173(a) would also provide that a physical therapist assistant shall be under direct on-premises supervision of a licensed physical therapist unless the act or the regulations authorize a more relaxed level of supervision. Proposed § 40.173(b) would repeat the requirements in section 9.1(c)(1)(i) of the act that performance of physical therapy services delegated to the physical therapist assistant are at all times the responsibility of the physical therapist. Proposed § 40.173(b)(2) would repeat the requirements from section 9.1(c)(1)(ii) of the act that supervision is based upon the complexity and acuity of the patient's needs, proximity and accessibility of the physical therapist to the physical therapist assistant, supervision available in the event of an emergency or critical event and type of practice setting. Because providing physical therapy services is the responsibility of the physical therapist, the Board believes that the licensed physical therapist shall have the authority to insist upon a greater level of supervision than the act or Board regulations would otherwise appear to require. Accordingly, the Board also proposes providing in § 40.173(b)(3) that the supervising physical therapist may determine and require that the physical therapist assistant provide services under greater supervision than would otherwise be required under the act or Board regulations, including that the physical therapist assistant provide services only under direct on-premises supervision.

Additionally, the Board proposes to add to § 40.171 (relating to functions of physical therapist assistants) an additional subsection to repeat the requirement in section 9.1(c)(2) of the act that the initial patient contact shall be made by a licensed physical therapist for evaluation of the patient and establishment of a plan of care. The

Board similarly proposes to amend § 40.53(b)(2) (relating to nondelegable activities; accountability) to provide that, in addition to the initial evaluation or reevaluation, the initial patient contact may not be with a physical therapist assistant. Because existing § 40.43(b)(4) already prohibits delegation of final discharge assessment/evaluation or establishment of discharge plan to a physical therapist assistant, the Board has not proposed amending its regulations to incorporate the prohibition in section 9.1(h) of the act that a physical therapist assistant may not authorize the discharge of a patient from physical therapy services.

Proposed § 40.173(c) would address the effect of practice setting upon the required level of supervision of a physical therapist assistant. Proposed § 40.173(c)(1) would repeat the requirement in section 9.1(c)(3)(i) of the act that when care is delivered to an individual in an acute care hospital, acute inpatient rehabilitation center, long-term acute care hospital setting or as otherwise required under Federal or State law or regulation, the physical therapist shall be under the direct on-premises supervision of a licensed physical therapist. Proposed § 40.173(c)(2) would repeat the requirement in section 9.1(c)(3)(ii) of the act that when care is provided to an individual in a preschool, primary school, secondary school or other similar educational setting, a licensed physical therapist shall make an onsite visit and examine the patient at least every four patient visits or every 30 days, whichever occurs first. Section 9.1(c)(3) of the act also does not address practice in the early intervention setting. Because this is so similar to the educational setting, albeit with younger patients, the Board, consistent with section 9.1(c)(3)(ii) of the act, proposes § 40.173(c)(3) to provide that when care is provided in an early intervention setting, a licensed physical therapist shall make an onsite visit and examine the patient at least every four patient visits or every 30 days, whichever occurs first. Proposed § 40.173(c)(4) would repeat the requirement in section 9.1(c)(3)(iii) of the act that when care is provided to a patient in a physical therapy independent private practice outpatient facility, a licensed physical therapist shall provide direct on-premises supervision of a physical therapist assistant for at least 50% of the hours worked by the physical therapist assistant during the calendar week unless otherwise required under Federal law and the physical therapist shall be immediately available by telecommunication if not providing direct on-premises supervision. The definition of "physical therapy independent private practice outpatient facility" in section 2 of the act explicitly excludes those practices owned by or affiliated with a hospital or healthcare system and section 9.1(c)(3) of the act also does not address hospital-related settings that are not for acute care. Because this is so similar to practice in private outpatient clinics and because patients in outpatient facilities likely will have less complex or acute needs, other licensed physical therapists will likely be close by and accessible and supervision would not otherwise be available in the event of an emergency, the Board applied the factors in section 9.1(c)(1)(ii) of the act and proposes, consistent with section 9.1(c)(3)(iii) of the act, in proposed § 40.173(c)(5) to provide that when care is provided to a patient in an outpatient facility of a practice owned or affiliated with a hospital or healthcare system, a licensed physical therapist shall provide direct on-premises supervision of a physical therapist assistant for at least 50% of the hours worked by the physical therapist assistant during the calendar week unless otherwise required under Federal law and the physical therapist shall be immediately available by telecommuni-

ation if not providing direct on-premises supervision. Proposed § 40.173(c)(6) would repeat the requirement in section 9.1(c)(3)(iv) of the act that for home health care, a licensed physical therapist shall make an onsite visit and actively participate in the treatment of the patient at least every seven patient visits or 17 days, whichever occurs first. Additionally, the Board proposes requiring that the “active participation” of a physical therapist in home health care include an examination of the patient, as is provided in the educational setting. Section 9.1(c)(3) of the act does not specifically address practice in a long-term care nursing facility, skilled nursing facility or extended care facility. Because a substantial portion of physical therapist assistants are employed in these practice settings, it is appropriate for the Board to set forth the applicable standard in its regulations. Section 9.1(c)(3)(iv) of the act provides that “For any home health care facility or practice setting not specified” in the preceding subparagraphs, the supervision standard is as previously discussed for home health care. Because by not specifying them the act makes this standard applicable to long-term care nursing facility, skilled nursing facility and extended care facility practice settings, the Board proposes in § 40.173(c)(7) to repeat the same standard applicable for home health care for these practice settings.

Section 9.1(i) of the act permits a physical therapist assistant to continue to render services to existing patients in an emergency situation, such as serious illness or death of a family member, that causes the unanticipated absence of the supervising physical therapist for not more than 2 days per month. Because it appears to be the intent of the General Assembly that these emergency provisions apply to all physical therapist assistants, and not only those certified to provide services under indirect supervision, the Board is proposing § 40.173(d) to codify this interpretation.

Because section 9.1(c)(6) of the act limits a physical therapist from supervising more than three physical therapist assistants at any time, the Board proposes to amend § 40.171(c) to provide that, instead of two physical therapist assistants, a physical therapist may supervise no more than three physical therapist assistants. Because physical therapist assistant students might also be participating in providing patient services under the supervision of a physical therapist clinical instructor, the Board proposes to provide additional clarification that the ratio of physical therapist assistants includes physical therapist assistant students, as well as certified physical therapist assistants.

To appropriately enforce these requirements, the Board proposes adding § 40.181(a) (relating to refusal, suspension or revocation of certification) to provide that the Board may take disciplinary action against a physical therapist assistant who provided services under indirect supervision without holding a certificate to do so (see paragraph (10)) or who provided services under indirect supervision beyond what is authorized for indirect supervision (see paragraph (11)). Section 11(a)(11) of the act (63 P. S. § 1311(a)(11)) authorizes the Board to take disciplinary action against a physical therapist who failed to supervise physical therapist assistants in accordance with the act or Board regulations.

Other topics

While preparing this proposed rulemaking to implement Act 38, the Board also realized that it had not completely amended its existing regulations to implement the transfer of licensure of athletic trainers from the

Board to the State Board of Medicine and the State Board of Osteopathic Medicine. Accordingly, this proposed rulemaking would delete from § 40.5 the fees charged to athletic trainers.

Fiscal Impact and Paperwork Requirements

The proposed rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will not impose additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

Sunset Date

The Board continuously monitors the effectiveness of its regulations. Therefore, a sunset date has not been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 6, 2011, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Professional Licensure Committee (HPLC) and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC). A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Regulatory Unit Counsel, Department of State, P. O. Box 2649, Harrisburg, PA 17105-2649, st-physical@state.pa.us within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-6514 (Act 38 of 2008) when submitting comments.

SUSAN L. WHITNEY, PhD, PT, NCS, ATC,
Chairperson

Fiscal Note: 16A-6514. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 40. STATE BOARD OF PHYSICAL THERAPY

Subchapter A. PHYSICAL THERAPISTS GENERAL PROVISIONS

§ 40.1. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

APTA—The American Physical Therapy Association.

* * * * *

CAPTE—The Commission on Accreditation in Physical Therapy Education.

Contact hour—A unit of measure equaling 60 minutes of participation in an approved continuing education course or program. For courses taken through an academic institution, a semester credit is equal to 15 contact hours.

Continuing competence—A structured process of education beyond professional entry-level education that is applicable to the practice of physical therapy and designed or intended to support the continuous development of physical therapists and to maintain and enhance their professional competence in accordance with this chapter and the act.

Direct on-premises supervision—The physical presence of a licensed physical therapist [on the premises where the physical therapist assistant or the supportive personnel is providing patient-care services, so that the physical therapist] in the facility, including affiliated buildings in immediate proximity, who is immediately available to [provide] exercise supervision, direction and control.

FSBPT—The Federation of State Boards of Physical Therapy.

* * * * *

§ 40.5. Fees.

The following fees are charged by the Board:

Physical therapist:

* * * * *

Application for reactivation of inactive license	\$30
[Athletic trainer:	
Application for certification	\$20
Biennial renewal	\$37
Certification of examination scores or certification	\$25
Verification of certification	\$15]
<i>Physical therapist assistant:</i>	
Initial application for [registration] certification by exam or endorsement	\$30
Certification of exam scores or [registration] certification	\$25
Biennial renewal of [registration] certification ..	\$45
Verification of [registration] certification	\$15
Initial application for certification to provide services under indirect supervision	\$30
Application for temporary certification	\$15
Application for reactivation of inactive certificate	\$30

LICENSURE

§ 40.11. [License by examination; requirements for examination] Educational requirements for licensure by examination.

[An] (a) Except as provided in § 40.17 (relating to foreign-educated physical therapists applying to

take the licensure examination and pursue a clinical experience), an applicant for license by examination shall have graduated from a physical therapy program accredited by [the Commission on Accreditation in Physical Therapy Education (CAPTE) which has provided adequate instruction in basic sciences, clinical science and physical therapy theory and procedures] CAPTE or by another National organization recognized by the Board that accredits physical therapy programs.

(b) An applicant completing the professional study of physical therapy after 2002 shall hold a minimum of a master's degree in physical therapy from a regionally accredited institution of higher education. An applicant completing the professional study of physical therapy between January 1, 1967, and December 31, 2002, shall hold a minimum of either:

(1) A baccalaureate degree in physical therapy from a regionally accredited institution of higher education.

(2) A baccalaureate degree from a regionally accredited institution of higher education and a post-baccalaureate certificate in physical therapy.

§ 40.12. Application for licensure.

(a) Evidence, satisfactory to the Board, shall be submitted indicating that the applicant:

* * * * *

(4) Has met the professional requirements [as set forth] in § 40.11 (relating to educational requirements for license by examination [; requirements for examination]).

(b) The applicant shall apply on forms supplied by the Board, answer all questions fully and provide all documentation required under subsection (a).

(c) The applicant shall pay the fee in § 40.5 (relating to fees) for application for physical therapist licensure by examination/endorsement.

§ 40.14. Examination; failure; reexamination.

(a) Applicants shall successfully pass, to the satisfaction of the Board, the examination approved by the Board. In cases of failure at the first examination, the applicant shall have, after the expiration of [6 months] 60 days and within [2 years] 1 year from the date of the first failure, the privilege of a second examination, with the payment of an additional examination fee charged by the vendor.

* * * * *

(d) An applicant may not take the examination more than three times in a consecutive 12-month period.

§ 40.17. Foreign-educated physical therapists applying to take the licensure examination and pursue a clinical experience.

To be eligible to take the examination for licensure, foreign-educated applicants for licensure shall comply with the following conditions:

(1) The applicant shall submit evidence, satisfactory to the Board, indicating that the applicant has met the requirements [stated] in § 40.12(a)(1)—(3) and (b) (relating to application for licensure) and pay the fee in

§ 40.5 (relating to fees) for application for physical therapist licensure through foreign training.

(2) The applicant shall provide written documentation that the applicant has graduated from a physical therapist education program that prepares the applicant to engage without restriction in the practice of physical therapy and that the school of physical therapy is recognized by the authorizing agency or entity of the jurisdiction in which the school is situated.

(3) [**The applicant shall provide written documentation of authorization to practice as a physical therapist without limitations in the country where the professional education took place.**

(4)] The applicant shall provide documentation of legal authorization to seek employment in the United States or its territories.

[(5)] (4) The applicant shall [**meet educational requirements**] provide satisfactory evidence that the applicant's education is substantially equivalent to the education of physical therapists educated in an accredited program as set forth in § 40.11 (relating to educational requirements for licensure by examination) by securing a credentials evaluation from a recognized and accredited evaluation agency approved by the Board. [**The**] **If the applicant's education was completed before 1998, the credentials evaluation must demonstrate that the applicant has met the requirement of at least 120 semester credit hours of which at least 42 credit hours must be in general education subjects and 69 credit hours must be in professional education subjects. If the applicant's education was completed in 1998 or later, credentials evaluation must demonstrate that the applicant has met the requirements of at least 150 semester hours of which at least 60 credit hours must be in general education subjects and 90 credit hours must be in professional education subjects.** If an applicant has deficiencies in general education or professional education, the applicant can correct the deficiencies as follows:

* * * * *

[(6)] (5) *General educational deficiencies.* The applicant may correct general educational deficiencies in the areas specified in paragraph (5)(i) by either:

* * * * *

[(7)] (6) *Clinical experience.* The applicant [**shall complete**] may correct a deficiency in clinical experience by obtaining, at the Board's discretion, up to 1 year of supervised clinical experience in the United States, as approved by the Board.

* * * * *

(Editor's Note: Sections 40.19 and 40.20 are new and printed in regular type to enhance readability.)

§ 40.19. Renewal of physical therapist license.

(a) A license issued under this subchapter expires on December 31 of each even-numbered year unless renewed for the next biennium.

(b) If a licensee's mailing address changes, the licensee shall notify the Board in writing within 10 days thereafter. Notice of renewal will be forwarded to the licensee's last known address on file with the Board. Failure of the Board to send or of the licensee to receive a biennial renewal application does not relieve the licensee of the biennial renewal responsibility.

(c) A licensee applying for biennial license renewal shall:

(1) Complete and submit the renewal application, including payment of the biennial renewal fee in § 40.5 (relating to fees) for application for biennial renewal of physical therapist license.

(2) Disclose any license to practice as a physical therapist in another state, territory, possession or country.

(3) Disclose any disciplinary action pending before the appropriate healthcare licensing authority in any other jurisdiction or taken since the most recent application for renewal, whether or not licensed to practice in that other jurisdiction.

(4) Disclose any pending criminal charges and any finding or verdict of guilt, admission of guilt, plea of nolo contendere or other criminal conviction since the most recent application for renewal.

(5) Verify that the licensee has complied with the continuing education requirements mandated by section 7.2 of the act (63 P.S. § 1307.2) during the biennial period immediately preceding the period for which renewal is sought in accordance with § 40.67 (relating to continuing education for licensed physical therapist).

(6) Verify that, if practicing as a physical therapist in this Commonwealth, the licensee maintains professional liability insurance coverage in accordance with section 9(b)(4) of the act (63 P.S. § 1309(b)(4)) and § 40.69 (relating to professional liability insurance).

§ 40.20. Inactive status of physical therapist license.

(a) A physical therapist license will become inactive upon either of the following:

(1) The licensee in writing affirmatively requests the Board to place licensure on inactive status. Written confirmation of inactive status will be forwarded to the licensee.

(2) The licensee fails to renew the license by the expiration of the renewal period.

(b) A physical therapist whose license has expired or been placed on inactive status may not practice as a physical therapist in this Commonwealth until the license has been reactivated.

(c) To reactivate an inactive license, the licensee shall apply on forms supplied by the Board, answering all questions fully. The licensee shall:

(1) Include the documentation required under § 40.67(b) (relating to continuing education for licensed physical therapist) for the immediately preceding biennium, which may be completed during the current biennium. Unless waived by the Board under § 40.67(a)(4), the Board will not reactivate a license until the required continuing education for the preceding biennium has been successfully completed.

(2) Pay the current renewal fee and the reactivation application fee specified in § 40.5 (relating to fees).

(3) Verify that the licensee did not practice as a physical therapist in this Commonwealth while the license was inactive.

(d) A licensee who does not make the verification required under subsection (c)(3) shall also pay prior biennial renewal fees and late fees as required under this subsection. Unless previously paid, the licensee shall pay the renewal fee for each biennial renewal period after the

license became inactive and during which the licensee practiced as a physical therapist in this Commonwealth. The licensee shall also pay a late fee of \$5 per month or part of the month from the first date the licensee practiced as a physical therapist in this Commonwealth after the license became inactive until the date the licensee files a fully-completed reactivation application. Payment of a late fee does not preclude the Board from taking disciplinary action for practicing as a physical therapist without a current license.

(e) In addition to the other requirements in this section, a licensee whose license has been inactive for 5 years or more shall demonstrate current competence to practice as a physical therapist by at least one of the following:

(1) Successful completion of the licensure examination required under § 40.13 (relating to areas of examination) and section 6(b) of the act (63 P. S. § 1306(b)).

(2) Satisfaction of the requirements in § 40.16 (relating to licensure by endorsement) and proof of continuous licensed practice of physical therapy in one or more other jurisdictions of the United States or Canada for at least 5 years immediately preceding application for reactivation.

SCOPE OF PRACTICE

§ 40.53. Nondelegable activities; accountability.

* * * * *

(b) A physical therapist may not assign or delegate to physical therapist assistants or supportive personnel functions which require the formal education or training and the skill and knowledge of a licensed physical therapist, including the following functions:

* * * * *

(2) Initial **patient contact and initial** evaluation or reevaluation.

* * * * *

PRACTICE WITHOUT [PHYSICIAN] REFERRAL

§ 40.61. Certificate of authorization to practice physical therapy without a referral.

(a) An applicant for certification of authorization to practice physical therapy without [the] a referral of a licensed physician shall submit evidence satisfactory to the Board, on forms supplied by the Board, that the applicant has met the following requirements:

* * * * *

(e) A certificateholder may treat [a person] an **individual** without a referral as provided in this chapter for up to 30 calendar days from the date of the first treatment. A physical therapist may not treat [a person] an **individual** beyond 30 days from the date of the first treatment unless the [person] **individual** has obtained a referral from a licensed physician, a **licensed physician assistant practicing under a written agreement, a certified registered nurse practitioner practicing under a collaborative agreement, a licensed dentist for the treatment of a condition that is within the scope of practice of dentistry or a licensed podiatrist for the treatment of a condition that is within the scope of practice of podiatry.** The date of the first treatment for purposes of this subsection is the date the person is treated by any physical therapist treating without a referral.

(f) A certificateholder may not treat a condition in [any person] an **individual** which is a nonneurologic, nonmuscular or nonskeletal condition or treat [a person] an **individual** who has an acute cardiac or acute pulmonary condition unless the certificateholder has consulted with the [person's] **individual's** licensed physician, dentist or podiatrist regarding the [person's] **individual's** condition and the physical therapy treatment plan or has referred the [person] **individual** to a licensed physician, dentist or podiatrist for diagnosis and referral.

§ 40.62. [Professional liability insurance] (Reserved).

[(a) **Beginning January 1, 2005, or upon applying for a certificate of authorization, whichever occurs earlier, a licensee who applies for and obtains a certificate of authorization shall obtain and maintain professional liability insurance coverage in the minimum amount required to be maintained by physicians under section 711 of the Medical Care Availability and Reduction of Error (MCARE) Act (40 P. S. § 1303.711).**

(b) A certificateholder shall notify the Board within 30 days of the holder's lapse in coverage of the required insurance.

(c) The certificate of authorization will automatically be suspended upon failure to be covered by the required insurance and will not be restored until submission to the Board of satisfactory evidence that the licensee has the required professional liability insurance.

(d) Satisfactory evidence of insurance coverage is any one of the following:

(1) A self-insurance plan that meets the standards and procedures established by the Insurance Department in 31 Pa. Code Chapter 243 (relating to medical malpractice and health-related self-insurance plans).

(2) Personally purchased professional liability insurance.

(3) Professional liability insurance, coverage provided by the licensee's employer.

(4) A similar type of coverage.]

§ 40.63. Continuing education for direct access certificateholder.

(a) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

[**Contact hour—A unit of measure equaling 60 minutes of participation in an approved continuing education course or program.]**

(b) *Continuing education requirement for renewal of certificate of authorization.* Beginning after the first renewal of the certificate of authorization, as a condition of certificate renewal, a physical therapist shall have completed during the preceding biennium a minimum of [20] 30 contact hours of physical therapy continuing education related to keeping the certificateholder apprised of advancements and new developments in the practice of the physical therapy profession. At least 10 of

the [20] 30 contact hours shall be in evaluative procedures to treat a person without a referral. **During renewal periods prior to January 1, 2011, a direct access certificateholder need complete only 20 hours of continuing education, including at least 10 hours in evaluative procedures.**

* * * * *

(g) *Waivers; exemptions for continuing education.* The Board may, in individual cases involving physical disability or illness, or undue hardship, grant a waiver of the continuing education requirements or grant an extension of time to complete the requirements. No waiver or extension of time will be granted unless a written request is submitted by the licensee; or in cases of physical disability or illness, by a physician licensed in this state or another state or territory of the United States or the District of Columbia and whose license is in good standing, or both. Necessary documentation must be received by the Board no later than 90 days preceding the biennial renewal. If the physical disability or illness or undue hardship for which the waiver has been granted continues beyond the period of the waiver, the licensee shall reapply for an extension of the waiver. The Board may, as a condition of any waiver granted, require the [**applicant**] licensee to make up all or part of the continuing education waived.

* * * * *

(i) *General continuing education requirement.* **Hours of continuing education applied to satisfy the requirement in this section may also be applied to satisfy the requirement in § 40.67 (relating to continuing education for licensed physical therapist). Satisfaction of the continuing education requirement in this section will be deemed to establish satisfaction of the continuing education requirement in § 40.67.**

CONTINUING EDUCATION

(*Editor's Note:* Sections 40.67—40.69 are new and printed in regular type to enhance readability.)

§ 40.67. Continuing education for licensed physical therapist.

(a) *Contact hour requirements.* With the biennial renewal period beginning January 1, 2011, a licensed physical therapist shall satisfy the following continuing education requirements.

(1) During each biennial renewal period, a licensee shall complete qualifying continuing education equal to at least 30 contact hours of continuing physical therapy education.

(2) Except as permitted in § 40.20(c)(1) (relating to inactive status of physical therapist license), paragraph (4) or as directed by the Board, continuing education may satisfy the requirement in paragraph (1) only for the biennium during which it was completed. A contact hour of continuing education may not be used to satisfy the requirement in paragraph (1) for more than 1 biennium.

(3) Unless otherwise excused by the act or this subchapter, failure to complete the minimum required amount of continuing education during the applicable renewal period as required under section 7.2 of the act (63 P.S. § 1307.2) and this section will subject the licensee to disciplinary action under section 11(a)(6) of the act (63 P.S. § 1311(a)(6)) as provided in § 40.52(11) (relating to unprofessional conduct; physical therapists).

(4) The Board may, in individual cases involving physical disability or illness, or undue hardship, grant a waiver of the continuing education requirements or grant an extension of time to complete the requirements. A waiver or extension of time will not be granted unless a written request is submitted by the licensee; or in case of physical disability or illness, by a physician licensed in this Commonwealth or another state or territory of the United States or the District of Columbia and whose license is in good standing, or both. The necessary documentation shall be received by the Board no later than 90 days preceding the biennial renewal. If the physical disability or illness or undue hardship for which the waiver has been granted continues beyond the period of the waiver, the licensee shall reapply for an extension of the waiver. The Board may, as a condition of a waiver granted, require the licensee to make up all or part of the continuing education involved.

(b) *Reporting completion of continuing education.* Continuing education shall be reported and documented in the following manner.

(1) In general, proof of completion of a course or program of continuing education must consist of a certificate of completion issued by the course or program provider, including:

(i) The name of the participant.

(ii) The name of the provider.

(iii) The date or dates of the course or program.

(iv) The name of the course and any Board issued approval number of the course or program.

(v) The number of contact hours of continuing education or academic credit.

(2) A licensee shall retain proof of completion of continuing education for 5 years after completion of the continuing education or after the completion of the renewal period during which the continuing education was required or applied, whichever is later.

(3) The Board will audit licensees to verify compliance with continuing education requirements. A licensee shall fully respond to an audit notice within 30 days or other time period allowed in the notice.

(c) *Credit for approved continuing education.* Credit for continuing education will be determined in accordance with the following.

(1) Credit for continuing education will be granted only for courses or programs offered by providers preapproved under subsection (d)(1) or approved by the Board under subsection (d)(2).

(2) Unless limited by this section, continuing education credit may be earned in a course or program relating to any of the following:

(i) Subject matter falling within the definition of "physical therapy" in section 2 of the act (63 P.S. § 1302).

(ii) Subject matter that is part of training necessary to qualify one for licensure as a physical therapist or certification of authority to practice physical therapy without a referral.

(iii) Law or ethics applicable to the practice of physical therapy.

(iv) Subject matter that otherwise keeps the licensee apprised of advancements and new developments in the practice of the profession of physical therapy.

(3) Continuing education credit may not be earned in a course in office management or practice building.

(4) A licensee may not receive credit more than once in a given renewal period for repetition of courses or programs with substantially similar content and objectives.

(5) A licensee teaching a course or program of continuing education may receive the same credit that a licensee attending the course or program would receive and may also receive credit for time spent in preparation. Credit for time spent in preparation may not exceed the credit available for a licensee attending the course or program.

(d) *Approval of continuing education courses and programs.* Continuing education courses and programs may be approved in accordance with this subsection.

(1) Provided that the course or program otherwise meets the requirements in subsection (c)(2) and the provider issues to each attending licensee a certificate of completion record in accordance with subsection (b)(1), a course or program of continuing education from a provider preapproved under this paragraph is approved by the Board.

(i) The following providers are preapproved:

- (A) APTA or its components.
- (B) FSBPT and its jurisdictions.
- (C) A physical therapy program accredited by CAPTE.

(ii) Any other provider seeking preapproved provider status shall:

- (A) Apply to the Board on forms supplied by the Board
- (B) Pay the required fee.

(C) Demonstrate that the provider is competent to provide continuing education to physical therapists without direct review by the Board.

(iii) The Board may terminate preapproved provider status if the provider, including the providers in subparagraph (i), is no longer able to demonstrate that it is competent to provide continuing education to physical therapists without direct review by the Board. The Board will audit preapproved providers to assure that the provider complies with the requirements in this paragraph and paragraph (3).

(iv) The Board will maintain a list of preapproved providers and make the list publicly available.

(2) A continuing education course or program offered by a provider not preapproved under paragraph (1) may be approved as provided in this paragraph.

(i) The provider shall apply at least 60 days prior to the date the continuing education course or program is scheduled to take place on forms provided by the Board and fully provide the information required on the application forms for the Board to fulfill its duties under this section. The application shall be submitted to the Board with payment of the fee as required under § 40.5 (relating to fees). A provider who is unable to submit the application at least 60 days prior to the date the course or program is given may request a waiver in writing setting forth the reasons why the 60-day requirement could not be met.

(ii) The provider shall apply for approval of each course or program of continuing education, which may include multiple presentations of the course or program at various locations and multiple offerings of the course or program. Unless approved by the Board, a significant change in content or use of instructors other than those

described in the application for approval is a separate course or program for which Board approval is required.

(iii) The Board may deny approval of a course or program of continuing education when the provider has previously failed or is not currently able to comply with the provider responsibilities in paragraph (3) or the course or program does not qualify under subsection (c)(1). The Board may approve in part and deny in part an application for approval of a course or program. The Board may deny an application for approval that does not comply with the act or this chapter.

(iv) The Board may terminate its prior approval of a course or program of continuing education when the applicant made one or more false or misleading material statements on the application. The Board may also terminate in part or in whole its prior approval of a course or program when it is later determined that the Board has grounds to deny approval in accordance with this section. Termination of approval will not forfeit credit for a course or program completed prior to termination of approval.

(v) The Board will maintain a list of approved courses and programs in a form accessible to licensees and the public.

(vi) If the provider has not separately sought approval under this paragraph, a licensee attending the course or program may apply for approval of a course or program of continuing education in accordance with this paragraph. The licensee shall apply for approval prior to attending the course or program. The Board may waive the requirements in paragraph (3) when a licensee attending a course or program applies for approval.

(3) For each course or program of continuing education, the provider shall:

(i) Disclose in advance to prospective attendees the objectives, content, teaching method and the number of hours of continuing education credit approved by the Board.

(ii) Provide physical facilities adequate for the number of anticipated participants and the teaching methods to be used.

(iii) Provide accurate instructional materials.

(iv) Utilize qualified instructors who are knowledgeable in the subject matter.

(v) Evaluate the course or program through the use of questionnaires of the participants and instructors.

(vi) Issue a certificate of completion to each participant.

(vii) Retain attendance records, written outlines and a summary of evaluations for 5 years.

(e) *Continuing competence.* Continuing education is a structured process of education beyond professional entry-level education that is applicable to the practice of physical therapy and is designed or intended to support the continuous development of physical therapists and to maintain and enhance their professional competence. Accordingly, a licensed physical therapist may earn up to 15 contact hours of required continuing education in each biennial renewal period through continuing competence activities that do not otherwise qualify under this section if the activity is approved by the Board under § 40.68 (relating to continuing competence for licensed physical therapist).

§ 40.68. Continuing competence for licensed physical therapist.

(a) *Requirements.* A licensed physical therapist may satisfy in part the requirements in § 40.67 (relating to continuing education for licensed physical therapist) by completing continued competence activities approved by the Board as provided in this section. The Board will be guided by the following principles in applying this section:

(1) Continuing competence should be self-directed by the physical therapist.

(2) Evaluation or assessment of current competence is critical for the physical therapist. The results of an evaluation or assessment should be used by the physical therapist to select appropriate development activities.

(3) A physical therapist should have a wide variety of activities available to demonstrate his competence. There is not a single right way to demonstrate competence.

(b) *Approval process.* A licensee shall apply to the Board on forms provided by the Board and receive approval from the Board to earn continuing education credit for continuing competence activities. The continuing competence activity shall be fully documented, including certification as appropriate. In determining whether to approve a continuing competence activity and how much credit to award, the Board will be guided by the following standards:

(1) Content within the continuing competence activity must be relevant to the physical therapy profession and the designated audience.

(2) The continuing competence activity must foster the participant's learning and professional engagement through reflection, interaction, participation and contribution.

(3) The continuing competence activity must incorporate, reflect and promote the use of evidence-based practice (patient values, available evidence and clinician experience) or be based on the act or this chapter.

(4) Qualified individuals with appropriate subject matter expertise and credentials shall develop and, when applicable, conduct the continuing competence activity.

(5) The continuing competence activity must include behavioral objectives that encompass the content of the activity. The objectives must promote a high level of learning in one or more of the cognitive, psychomotor and affective domains.

(6) The design of the activity must support the achievement of the objectives.

(7) Each continuing competence activity must include objective methods to assess the participant's attainment of the specified activity outcomes.

(8) There must be mechanisms in place for ongoing review and evaluation of the quality and the effectiveness of the continuing competence activity. The activity shall be modified based on information gained from review and evaluation.

(9) The continuing competence provider shall furnish clear, complete information to potential learners about continuing competence activities regarding administrative details, activity specifics and content, biography of the activity deliverer/presenter and participant requirements.

(10) The continuing competence provider shall have established processes for developing, administering and documenting the continuing competence activity.

(c) *Credit.* Credit for continuing competence activities may be awarded in accordance with this subsection. Credit will not be awarded for an activity that duplicates another continuing competence activity or continuing education for which credit is also awarded.

(1) For completion of a fellowship conferred by an organization credentialed by the APTA in a specialty area of the practice of physical therapy—10 contact hours for each full 12-month period of fellowship to be credited in the renewal cycle of completion of the fellowship.

(2) For completion of a residency program in physical therapy offered by an APTA credentialed organization—10 contact hours for each full 12-month period of clinical participation to be credited in the renewal cycle of completion of the residency program.

(3) For specialty certification or specialty recertification by the American Board of Physical Therapy Specialization or its successor organization—15 contact hours upon receipt of certification or recertification to be credited in the renewal cycle of certification or recertification.

(4) Taking the practice review tool of the FSBPT—5 contact hours; passing the practice review tool of the FSBPT—an additional 5 contact hours.

(5) Other activities evaluated and approved by the FSBPT—the number of continuing education units set by FSBPT with each continuing education unit worth 10 contact hours of credit.

(6) Becoming a Credentialed Clinical Instructor or a Credentialed Clinical Instructor Trainer as recognized by the APTA—1 contact hour for each hour of coursework required to receive the credential, not to exceed 15 contact hours, to be credited in the renewal cycle during which the credential was issued.

(7) Submission of a request to a funding agency for a research grant as a principal or coprincipal investigator—10 contact hours; award of the grant—an additional 10 contact hours.

(8) Service as a grants reviewer—1 contact hour for every 2 hours of review up to a maximum of 5 contact hours in a single renewal cycle.

(9) Authoring or editing a book dealing with a subject related to the practice of physical therapy—as determined by the Board, not to exceed 15 contact hours, to be awarded in the renewal cycle in which the book was published.

(10) Authoring or editing a chapter of a book dealing with a subject related to the practice of physical therapy—as determined by the Board, not to exceed 10 contact hours, to be awarded in the renewal cycle in which the book was published.

(11) Authoring a published peer-reviewed article relating to the practice of physical therapy—as determined by the Board, not to exceed 10 contact hours, to be awarded in the renewal cycle in which the article was published.

(12) Authoring a published non-peer-reviewed article relating to the practice of physical therapy—as determined by the Board, not to exceed 5 contact hours, to be awarded in the renewal cycle in which the article was published.

(13) Completing a professional self-assessment that is a process for the licensee to evaluate current professional practice ability, establish goals to improve those abilities, develop a plan to meet those goals and document that the

objectives are being accomplished—as determined by the Board, not to exceed a total of 5 contact hours in a single renewal cycle.

(14) Participating in a National physical therapy or interdisciplinary (including physical therapy) organization as an officer or chair of a physical therapy services committee or physical therapy services task force member for at least 1 year—5 contact hours for each full year of participation.

(15) Participation in a State physical therapy or interdisciplinary (including physical therapy) organization as an officer or chair of a physical therapy services committee for at least 1 year—5 contact hours for each full year of participation.

(16) Participation in a local physical therapy or interdisciplinary (including physical therapy) organization as an officer or chair of a physical therapy services committee for at least 1 year—as determined by the Board not to exceed 5 contact hours in a single renewal cycle.

(17) Participation in a physical therapy professional organization committee involved with physical therapy services for at least 1 year—as determined by the Board not to exceed 5 contact hours in a single renewal cycle.

(18) Other continuing competence activities—as determined by the Board.

PROFESSIONAL LIABILITY INSURANCE

§ 40.69. Professional liability insurance.

(a) *Professional liability insurance requirements.* As required under section 9.1(b)(4) of the act (63 P. S. § 1309.1(b)(4)), a licensed physical therapist shall maintain professional liability insurance in the minimum amount of \$1 million per occurrence or claims made as a condition of practicing as a physical therapist in this Commonwealth. Coverage may be provided through:

(1) A self-insurance plan that meets the standards and procedures established by the Insurance Department in 31 Pa. Code Chapter 243 (relating to medical malpractice and health-related self-insurance plans).

(2) Personally purchased professional liability insurance.

(3) Professional liability insurance, coverage provided by the licensee’s employer.

(4) A similar type of coverage.

(b) *Proof of professional liability insurance coverage.* Proof of professional liability insurance coverage must include a certificate of insurance or copy of the declaration page from the insurance policy setting forth the effective date, expiration date and dollar amounts of coverage. A license that was issued in reliance upon a letter from the applicant’s insurance carrier indicating that the applicant will be covered against professional liability effective upon the issuance of the applicant’s license as permitted under section 9.1(b)(4)(iii.2) of the act will become inactive as a matter of law 30 days after issuance of the license if the licensee has not provided proof of professional liability insurance coverage and will remain inactive until the licensee provides proof of insurance coverage.

(c) *Disciplinary action.* Failure to maintain insurance coverage as required shall subject the licensee to disciplinary action under section 11(a)(6) of the act (63 P. S. § 1311(a)(6)) as provided in § 40.52(11) (relating to unprofessional conduct; physical therapists).

Subchapter C. PHYSICAL THERAPIST ASSISTANTS

GENERAL PROVISIONS

§ 40.152. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Indirect supervision—Supervision of a physical therapist assistant by a licensed physical therapist that is not direct on-premises supervision, as authorized under section 9.1(c) of the act (63 P. S. § 1309.1(c)) and this subchapter, including § 40.173 (relating to supervision of physical therapist assistant by licensed physical therapist).

Physical therapist assistant—A person who has been [registered] certified in accordance with the act and this subchapter [and who provides patient-care services only in compliance with this chapter] to provide services as a physical therapist assistant.

Physical Therapist Assistant [Registration] Certification Examination—An examination adopted by the Board and administered in accordance with section 812.1 of The Administrative Code of 1929 (71 P. S. § 279.3(a)). The term also includes an examination administered by another state, territory or the District of Columbia if it is the same examination adopted by the Board.

Physical therapy independent private practice outpatient facility—

(i) A practice owned and operated by a licensee under the act, or by a licensee under the act and a healthcare practitioner, licensed by this Commonwealth, as permitted by law.

(ii) This term does not include a practice owned or affiliated with a hospital or healthcare system.

[REGISTRATION] CERTIFICATION

§ 40.161. [Registration of] Certification as physical therapist assistants; practice; exceptions.

(a) A person may not perform or hold himself out as being able to perform as a physical therapist assistant in this Commonwealth unless the person is [registered] certified by the Board under section 9.1 of the act (63 P. S. § 1309.1) and this subchapter or exempted under this section.

(b) A person or business entity may not use in connection with a business name or activity the words “physical therapist assistant,” the letters “P.T.A.” or similar words and related abbreviations to imply that physical therapist assistant services are being provided, unless the services are provided by a physical therapist assistant [registered] certified under the act and this subchapter.

* * * * *

§ 40.162. Application for [registration] certification.

(a) The applicant shall submit evidence satisfactory to the Board, on forms supplied by the Board, that the applicant has met the following criteria. The applicant:

(1) Satisfies either of the following age requirements:

(i) Is at least 20 years of age [, unless otherwise determined by the Board].

(ii) **Is at least 18 years of age and the Board has determined** that the candidate has proved the capability to accept and handle the responsibilities appurtenant to **[registration] certification**.

* * * * *

(4) Has met the professional requirements for **[registration] certification** under § 40.163 (relating to requirements for **[registration] certification**).

(b) An applicant for **[registration] certification** issued by the Board shall apprise the Board of the following:

* * * * *

(c) The reporting responsibilities enumerated in subsection (b) continue after the Board issues a **[registration] certification**. If, after the Board has issued a **[registration] certification**, one or more events listed under subsection (b)(1) and (2) occur, the **[registrant] certified physical therapist assistant** shall report that matter to the Board in writing on the biennial **[reregistration] renewal** application or within 90 days of its occurrence, whichever occurs sooner. The **[registrant] certified physical therapist assistant** shall report an event occurring under subsection (b)(3) within 30 days of occurrence.

§ 40.163. Requirements for **[registration] certification**.

(a) Under section 9.1(a) of the act (63 P. S. § 1309.1(a)), an applicant for **[registration] certification** by examination shall submit evidence of the following:

* * * * *

(2) A passing grade on the physical therapist assistant **[registration] certification** examination.

(b) Under section 6(d.1) of the act (63 P. S. § 1306(d.1)), an applicant for reciprocal **[registration] certification** shall submit evidence of a valid license, certificate or registration as a physical therapist assistant issued by another state, territory or the District of Columbia, where the requirements for licensure, certification or registration were on the date of issuance substantially the same as those required by this Commonwealth, and which accords similar privileges to persons **[registered] certified** as physical therapist assistants in this Commonwealth.

§ 40.164. Physical therapist assistant **[registration] certification** examination.

(a) *Application procedure.* An applicant applying for **[registration] certification** by examination shall take the physical therapist assistant **[registration] certification** examination. The applicant who is taking the examination within this Commonwealth shall comply with the following:

* * * * *

(*Editor's Note:* Sections 40.165 and 40.166 are new and printed in regular type to enhance readability.)

§ 40.165. **Authorization to provide services as physical therapist assistant under indirect supervision.**

(a) An applicant for a certificate of authority to provide services as a physical therapist assistant under indirect

supervision by a licensed physical therapist shall submit to the Board on forms supplied by the Board a completed application, including all necessary supporting documents, and pay the fee in § 40.5 (relating to fees) for initial application for certification to provide services under indirect supervision.

(b) The Board will grant a certificate of authority as described in this section to an applicant who:

(1) Demonstrates that the applicant satisfies the requirements in §§ 40.161—40.164.

(2) Demonstrates that the applicant satisfies the requirements in section 9.1(c)(4) of the act (63 P. S. § 1309.1(c)(4)) for certification to provide services as a physical therapist assistant under indirect supervision of a licensed physical therapist by either verifying that the applicant:

(i) Has at least 2,000 hours of experience providing patient-related acts and services under the supervision of one or more licensed physical therapists, as verified by those physical therapists.

(ii) Worked as a physical therapist assistant for at least 3 years between October 2, 2003, and October 2, 2008, the 5-year period immediately preceding the effective date of section 9.1(c)(4) of the act, and providing a detailed resume or other adequate documentation to corroborate the verification. Part-time work will be acceptable if it is at least equivalent to 3 years of full-time work.

(3) Otherwise complies with this subchapter.

§ 40.166. **Temporary certificate to provide services as physical therapist assistant.**

(a) An applicant for a temporary certificate to provide services as a physical therapist assistant under section 9.1(a.1) of the act (63 P. S. § 1309.1(a.1)) shall apply to the Board on forms provided by the Board including all necessary supporting documents and pay the fee in § 40.5 (relating to fees) for application for temporary certificate to provide services as a physical therapist assistant.

(b) The Board will grant a temporary certificate as described in this section to an applicant who:

(1) Demonstrates that the applicant satisfies the requirements in §§ 40.161—40.164 except the certification examination requirement in § 40.163(a)(2) (relating to requirements for certification).

(2) Has applied for certification to provide services as a physical therapist assistant in accordance with §§ 40.161—40.164 or § 40.165.

(3) Has not previously sat for the certification examination.

(4) Has not previously received a temporary certificate under this section.

(5) Otherwise complies with this subchapter.

(c) The Board may rescind a temporary certificate issued under this section if the Board determines that the certificate was issued based upon fraudulent information, such as the applicant's identity or educational, criminal, or professional or occupational licensure record.

(d) A temporary certificate issued under this section will expire upon the earlier of failing the certification examination or 6 months after issuance. A temporary certificate issued under this section will become void upon issuance of a certificate to provide services as a physical therapist assistant under §§ 40.161—40.165.

(e) A temporary certificate may not be renewed or extended beyond its expiration. The holder of a temporary certificate shall return the certificate to the Board within 10 days after its expiration.

(f) The holder of a temporary certificate may provide services as a physical therapist assistant only under the direct on-premises supervision of a licensed physical therapist.

SCOPE OF ACTIVITIES

§ 40.171. Functions of physical therapist assistants.

* * * * *

(c) Patient care services performed by a physical therapist assistant under [**direct on-premises**] the supervision of a physical therapist shall be on the basis of not more than [**two**] **three** physical therapist assistants for a physical therapist. **A student in a physical therapist assistant program is counted along with a physical therapist assistant in determining compliance with this restriction.**

(d) **The initial patient contact shall be made by a licensed physical therapist for evaluation of the patient and establishment of a plan of care.**

(Editor's Note: The following section is new and printed in regular type to enhance readability.)

§ 40.173. Supervision of physical therapist assistant by licensed physical therapist.

(a) *General rule.* A physical therapist assistant may provide patient care services only under the supervision of a licensed physical therapist. Except as otherwise provided in the act or this subchapter, a physical therapist assistant may provide patient care services only under the direct on-premises supervision of a licensed physical therapist.

(b) *Supervision generally.* The required level of supervision depends upon the following factors:

(1) The performance of selected acts and services by the physical therapist assistant is the responsibility of the licensed physical therapist at all times.

(2) Supervision shall be based upon the following:

(i) The complexity and acuity of the patient's needs.

(ii) The proximity and accessibility of the licensed physical therapist to the certified physical therapist assistant.

(iii) The amount of supervision available in the event of an emergency or critical event.

(iv) The type of practice setting in which the service is provided.

(3) The supervising licensed physical therapist may determine and require that the physical therapist assistant provide services under greater supervision than would otherwise appear to be required under section 9.1(c)(3) of the act (63 P. S. § 1309.1(c)(3)) or this section, including requiring that the physical therapist assistant provide services under direct on-premises supervision.

(c) *Practice setting.* A physical therapist assistant holding a current certificate of authority to provide services under indirect supervision may do so in accordance with this section and section 9.1(c) of the act.

(1) When care is delivered to an individual in an acute care hospital, acute inpatient rehabilitation center, long-term acute care hospital setting or as otherwise required under Federal or State law or regulation, the physical

therapist assistant shall be under the direct on-premises supervision of a licensed physical therapist.

(2) When care is provided to an individual in a pre-school, primary school, secondary school or other similar educational setting, a licensed physical therapist shall make an onsite visit and examine the patient at least every four patient visits or every 30 days, whichever occurs first.

(3) When care is provided to an individual in an early intervention setting, a licensed physical therapist shall make an onsite visit and examine the patient at least every four patient visits or every 30 days, whichever occurs first.

(4) When care is provided to a patient in a physical therapy independent private practice outpatient facility, a licensed physical therapist shall provide direct on-premises supervision for a physical therapist assistant for at least 50% of the hours worked by the physical therapist assistant during the calendar week unless otherwise required under Federal law. The physical therapist shall be immediately available by telecommunication when not providing direct on-premises supervision.

(5) When care is provided to a patient in an outpatient facility of a practice owned or affiliated with a hospital or healthcare system, a licensed physical therapist shall provide direct on-premises supervision for a physical therapist assistant for at least 50% of the hours worked by the physical therapist assistant during the calendar week unless otherwise required under Federal law. The physical therapist shall be immediately available by telecommunication if not providing direct on-premises supervision.

(6) For home health care, a licensed physical therapist shall make an onsite visit and actively participate in the treatment of the patient at least every seven patient visits or every 14 days, whichever occurs first. For purposes of this paragraph, active participation includes examination of the patient.

(7) For care provided in a long-term care nursing facility, skilled nursing facility or extended care facility, a licensed physical therapist shall make an onsite visit and actively participate in the treatment of the patient at least every seven patient visits or every 14 days, whichever occurs first. For purposes of this paragraph, active participation includes examination of the patient.

(d) *Emergency situations.* The emergency situation provisions in section 9.1(i) of the act apply to all current certified physical therapist assistants, whether or not authorized by the Board under section 9.1(c)(4) of the act and § 40.165 (relating to authorization to provide services as physical therapist assistant under indirect supervision) to provide services under supervision of a licensed physical therapist other than direct on-premises supervision.

DISCIPLINE

§ 40.181. Refusal, suspension or revocation of [registration] certification.

(a) Under section 9.1(f) of the act (63 P. S. § 1309.1(f)), the Board may refuse, suspend or revoke the [**registration**] **certification** of a person who has:

* * * * *

(10) Provided services as a physical therapist assistant under indirect supervision without having a current certificate of authorization to prac-

tice under indirect supervision issued under § 40.165 (relating to authorization to provide services as physical therapist assistant under indirect supervision).

(11) Provided services as a physical therapist assistant under indirect supervision other than as authorized by section 9.1(c) of the act and § 40.173 (relating to supervision of physical therapist assistant by licensed physical therapist).

* * * * *

MAINTENANCE OF [REGISTRATION] CERTIFICATION

§ 40.191. Renewal of [registration] certification.

(a) A [registration] certification issued under this subchapter expires on December 31 of every [even numbered] even-numbered year unless renewed for the next biennium.

(b) Biennial renewal forms and other forms and literature to be distributed by the Board will be forwarded to the last mailing address given to the Board by the [registrant] certified physical therapist assistant. The [registrant] certified physical therapist assistant shall notify the Board in writing within 10 days after making an address change.

(c) To retain the right to engage in practice, the [registrant's registration] certified physical therapist assistant's certification shall be renewed by the [registrant] certified physical therapist assistant in the manner prescribed by the Board, and the required fee shall be paid by the [registrant] certified physical therapist assistant prior to the expiration of the next biennium. A certified physical therapist assistant applying for biennial license renewal shall:

(1) Complete and submit the renewal application, including payment of the biennial renewal fee in § 40.5 (relating to fees) for application for biennial renewal of physical therapist assistant certificate.

(2) Disclose any license to provide services as a physical therapist assistant in another state, territory, possession or country.

(3) Disclose any disciplinary action pending before the appropriate healthcare licensing authority in any other jurisdiction or taken since the most recent application for renewal, whether or not licensed, registered or certified to practice in that other jurisdiction.

(4) Disclose any pending criminal charges and any finding or verdict of guilt, admission of guilt, plea of nolo contendere or other criminal conviction since the most recent application for renewal.

(5) Verify that the certified physical therapist assistant has complied with the continuing education requirements mandated by section 9.1(j) of the act (63 P. S. § 1309.1(j)) during the biennial period immediately preceding the period for which renewal is sought in accordance with § 40.192 (relating to continuing education for certified physical therapist assistant).

(d) When a [registration] certification is renewed beyond December 31 of an [even numbered] even-numbered year, a [penalty] late fee of \$5 for each month or part of a month that the [registrant] certi-

fied physical therapist assistant has engaged in practice beyond the renewal date will be charged, in addition to the renewal fee. Payment of a late fee does not preclude the Board from taking disciplinary action for providing services as a physical therapist assistant without a current certification.

(e) A [registrant] certified physical therapist assistant who does not intend to practice in this Commonwealth and who does not desire to renew the [registration] certification shall inform the Board in writing. Written confirmation of the Board's receipt of the request and notice that the [registration] certification has been classified as inactive will be forwarded to the [registrant] certified physical therapist assistant.

(f) The [registrant] certified physical therapist assistant who either fails to pay the biennial renewal fee or who notifies the Board of the desire not to renew the [registration] certification will not be sent biennial renewal forms for the following biennial renewal periods unless the [registrant] certified physical therapist assistant requests the Board, in writing, to reactivate the [registration] certification.

(g) [A registrant who is applying to return to active status is required to pay the current fees and submit a notarized affidavit stating the period of time during which the registrant was not engaged in practice in this Commonwealth.] To reactivate an inactive certification, the certified physical therapist assistant shall apply on forms supplied by the Board and answer the questions fully. The certified physical therapist assistant shall:

(1) Include the documentation required under § 40.192(b) for the immediately preceding biennium, which may be completed during the current biennium. Unless waived by the Board under § 40.192(a)(4), the Board will not reactivate a certificate until the required continuing education for the preceding biennium has been successfully completed.

(2) Pay the current renewal fee and the reactivation application fee in § 40.5.

(3) Verify that the certified physical therapist assistant did not provide services as a physical therapist assistant in this Commonwealth while the certification was inactive.

(h) A certified physical therapist assistant who does not make the verification of subsection (g)(3) shall also pay prior biennial renewal fees and late fees as required under this subsection. Unless previously paid, the certified physical therapist assistant shall pay the renewal fee for each biennial renewal period after the certificate became inactive and during which the certified physical therapist assistant provided services as a physical therapist assistant in this Commonwealth. The certified physical therapist assistant shall also pay a late fee of \$5 per month or part of month from the first date the certified physical therapist assistant provided services as a physical therapist assistant in this Commonwealth after the certificate became inactive until the date the certified physical therapist assistant files a fully-completed reactivation application. The applicant for [registration] certification renewal will not be assessed a fee or penalty for preceding biennial periods in which the applicant did not

[engage in practice] provide services as a physical therapist assistant in this Commonwealth. Payment of a late fee does not preclude the Board from taking disciplinary action for providing services as a physical therapist assistant without a current certification.

(i) If other conditions of the act and this chapter have been met, active status will be restored upon payment of fees **[and penalties]** which have accrued.

(j) A certified physical therapist assistant who has not renewed the certification may not provide services as a physical therapist assistant in this Commonwealth until the certification has been renewed or reactivated. A certified physical therapist assistant who provides services as a physical therapist assistant in this Commonwealth after the certification has expired and before it has been renewed or reactivated is subject to disciplinary action under section 9.1(d) and (f) of the act, as set forth in § 40.181(a)(6) (relating to refusal, suspension or revocation of certification). A [registrant] certified physical therapist assistant who has engaged in practice during a period in which the [registrant] certified physical therapist assistant's certification was not [registered] active may be subject to criminal prosecution under section 12 of the act (63 P. S. § 1312).

(Editor's Note: Sections 40.192 and 40.193 are new and printed in regular type to enhance readability.)

§ 40.192. Continuing education for certified physical therapist assistant.

(a) *Contact hour requirements.* With the biennial renewal period beginning January 1, 2011, a certified physical therapist assistant shall satisfy the following continuing education requirements.

(1) During each biennial renewal period, a certified physical therapist assistant shall complete qualifying continuing education equal to at least 30 contact hours of continuing physical therapy education, including at least 4 contact hours in identifying and responding to emergency health conditions.

(2) Except as permitted in § 40.191(g)(1) (relating to renewal of certification), paragraph (4) or as directed by the Board, continuing education may satisfy the requirement in paragraph (1) only for the biennium during which it was completed. A contact hour of continuing education may not be used to satisfy the requirement in paragraph (1) for more than 1 biennium.

(3) Unless otherwise excused by the act or this subchapter, failure to complete the minimum required amount of continuing education during the applicable renewal period as required under section 9.1(j) of the act (63 P. S. § 1309.1(j)) and this section will subject the certified physical therapist assistant to disciplinary action under section 9.1(f) of the act as provided in § 40.181(6) (relating to refusal, suspension or revocation of certification).

(4) The Board may, in individual cases involving physical disability or illness, or undue hardship, grant a waiver of the continuing education requirements or grant an extension of time to complete the requirements. A waiver or extension of time will not be granted unless a written request is submitted by the certified physical therapist assistant; or in case of physical disability or illness, by a physician licensed in this Commonwealth or another state or territory of the United States or the

District of Columbia and whose license is in good standing, or both. The necessary documentation shall be received by the Board no later than 90 days preceding the biennial renewal. If the physical disability or illness or undue hardship for which the waiver has been granted continues beyond the period of the waiver, the certified physical therapist assistant shall reapply for an extension of the waiver. The Board may, as a condition of a waiver granted, require the certified physical therapist assistant to make up all or part of the continuing education involved.

(b) *Reporting completion of continuing education.* Continuing education shall be reported and documented in the following manner.

(1) In general, proof of completion of a course or program of continuing education must consist of a certificate of completion issued by the course or program provider, including:

(i) The name of the participant.

(ii) The name of the provider.

(iii) The date or dates of the course or program.

(iv) The name and any Board issued approval number of the course or program.

(v) The number of contact hours of continuing education or academic credit.

(2) A certified physical therapist assistant shall retain proof of completion of continuing education for 5 years after completion of the continuing education or after the completion of the renewal period during which the continuing education was required or applied, whichever is later.

(3) The Board will audit certified physical therapist assistants to verify compliance with continuing education requirements. A certified physical therapist assistant shall fully respond to an audit notice within 30 days or other time period allowed in the notice.

(c) *Credit for approved continuing education.* Credit for continuing education will be determined in accordance with the following.

(1) Credit for continuing education will be granted only for courses or programs offered by providers preapproved under subsection (d)(1) or approved by the Board under subsection (d)(2).

(2) Unless limited by this section, continuing education credit may be earned in a course or program relating to any of the following:

(i) Subject matter falling within the definition of "physical therapy" in section 2 of the act (63 P. S. § 1302).

(ii) Law or ethics applicable to the practice of physical therapy.

(iii) Subject matter that otherwise keeps the certified physical therapist assistant apprised of advancements and new developments in the practice of the profession of physical therapy.

(3) Continuing education credit may not be earned in a course in office management or practice building.

(4) A certified physical therapist assistant may not receive credit more than once in a given renewal period for repetition of courses or programs with substantially similar content and objectives.

(5) A certified physical therapist assistant teaching a course or conducting a program of continuing education

may receive the same credit that a certified physical therapist assistant attending the course or program would receive and may also receive credit for time spent in preparation. Credit for time spent in preparation may not exceed the credit available for a certified physical therapist assistant attending the course or program.

(d) *Approval of continuing education courses.* Continuing education courses or programs may be approved in accordance with this subsection.

(1) Provided that the course or program otherwise meets the requirements in subsection (c)(2) and the course or program provider issues to each attending certified physical therapist assistant a certificate of completion record in accordance with subsection (b)(1), a course or program of continuing education from a provider preapproved under this paragraph is approved by the Board.

(i) The following providers are preapproved:

(A) APTA or its components.

(B) FSBPT and its jurisdictions.

(C) A physical therapy program accredited by CAPTE.

(D) The American Heart Association and the American Red Cross and their component organizations for purposes of providing continuing education in identifying and responding to emergency health conditions as required under subsection (a)(1).

(ii) Any other provider seeking preapproved provider status shall:

(A) Apply to the Board on forms supplied by the Board.

(B) Pay the required fee.

(C) Demonstrate that the provider is competent to provide continuing education to physical therapist assistants without direct review by the Board.

(iii) The Board may terminate its prior approval of a course or program of continuing education when the applicant made one or more false or misleading material statements on the application. The Board may also terminate in part or in whole its prior approval of a course or program when it is later determined that the Board has grounds to deny approval in accordance with this section. Termination of approval will not forfeit credit for a course or program completed prior to termination of approval.

(iv) The Board will maintain a list of preapproved providers and make the list publicly available.

(2) A continuing education course or program offered by a provider not preapproved under paragraph (1) may be approved as provided in this paragraph.

(i) The provider shall apply at least 60 days in prior to the date the continuing education course or program is scheduled to take place on forms provided by the Board and fully provide the information required on the application forms for the Board to fulfill its duties under this section. The application shall be submitted to the Board with payment of the fee as required under § 40.5 (related to fees). A provider who is unable to submit the application at least 60 days prior to the date the course or program is given may request a waiver in writing setting forth the reasons why the 60-day requirement could not be met.

(ii) The provider shall apply for approval of each course or program of continuing education, which may include multiple presentations of the course or program at vari-

ous locations and multiple offerings of the course or program. Unless approved by the Board, a significant change in content or use of an instructor or instructors other than those described in the application for approval is a separate course or program for which Board approval is required.

(iii) The Board may deny approval of a course or program of continuing education when the provider has previously failed or is not currently able to comply with the provider responsibilities in paragraph (3) or the course or program does not qualify under subsection (c)(1). The Board may approve in part and deny in part an application for approval of a course or program. The Board may deny an application for approval that does not comply with the act or this chapter.

(iv) The Board may terminate its prior approval of a course or program of continuing education when the applicant made one or more false or misleading material statements on the application. The Board may also terminate in part or in whole its prior approval of a course or program when it is later determined that the Board has grounds to deny approval in accordance with this section. Termination of approval will not forfeit credit for a course or program completed prior to termination of approval.

(v) The Board will maintain a list of approved courses and programs in a form accessible to certified physical therapist assistants and the public.

(vi) If the provider has not separately sought approval under this paragraph, a certified physical therapist assistant attending the course or program may apply for approval of a course or program of continuing education in accordance with this paragraph. The certified physical therapist assistant shall apply for approval prior to attending the course or program. The Board may waive the requirements in paragraph (3) when a certified physical therapist assistant attending a course or program applies for approval.

(3) For each course or program of continuing education, the provider shall:

(i) Disclose in advance to prospective attendees the objectives, content, teaching method and the number of hours of continuing education credit approved by the Board.

(ii) Provide physical facilities adequate for the number of anticipated participants and the teaching methods to be used.

(iii) Provide accurate instructional materials.

(iv) Utilize qualified instructors who are knowledgeable in the subject matter.

(v) Evaluate the course or program through the use of questionnaires of the participants and instructors.

(vi) Issue a certificate of completion to each participant.

(vii) Retain attendance records, written outlines and a summary of evaluations for 5 years.

(e) *Continuing competence.* Continuing education is a structured process of education beyond professional entry-level education that is applicable to the practice of physical therapy and is designed or intended to support the continuous development of physical therapist assistants and to maintain and enhance their professional competence. Accordingly, a certified physical therapist assistant may earn up to 15 contact hours of required

continuing education in each biennial renewal period through continuing competence activities that do not otherwise qualify under this section if the activity is approved by the Board under § 40.193 (relating to continuing competence for certified physical therapist assistant).

§ 40.193. Continuing competence for certified physical therapist assistant.

(a) *Requirements.* A certified physical therapist assistant may satisfy in part the requirements in § 40.192 (relating to continuing education for certified physical therapist assistant) by completing continuing competence activities approved by the Board as provided in this section. The Board will be guided by the following principles in applying this section.

(1) Continuing competence should be self-directed by the physical therapist assistant.

(2) Evaluation or assessment of current competence is critical for the physical therapist assistant. The results of an evaluation or assessment should be used by the physical therapist assistant to select appropriate development activities.

(3) A physical therapist assistant should have a wide variety of activities available to demonstrate his competence. There is not a single right way to demonstrate competence.

(b) *Approval process.* A certified physical therapist assistant shall apply to the Board on forms provided by the Board and receive approval from the Board to earn continuing education credit for continuing competence activities. The continuing competence activity shall be fully documented, including certification as appropriate. In determining whether to approve a continuing competence activity and how much credit to award, the Board will be guided by the following standards.

(1) Content within the continuing competence activity must be relevant to the physical therapy profession and the designated audience.

(2) The continuing competence activity must foster the participant's learning and professional engagement through reflection, interaction, participation and contribution.

(3) The continuing competence activity must incorporate, reflect and promote the use of evidence-based practice (patient values, available evidence and clinician experience) or be based on the act or this chapter.

(4) Qualified individuals with appropriate subject matter expertise and credentials shall develop and, when applicable, conduct the continuing competence activity.

(5) The continuing competence activity must include behavioral objectives that encompass the content of the activity. The objectives must promote a high level of learning in one or more of the cognitive, psychomotor and affective domains.

(6) The design of the activity must support the achievement of the objectives.

(7) Each continuing competence activity must include objective methods to assess the participant's attainment of the specified activity outcomes.

(8) There must be mechanisms in place for ongoing review and evaluation of the quality and the effectiveness of the continuing competence activity. The activity shall be modified based on information gained from review and evaluation.

(9) The continuing competence provider shall furnish clear, complete information to potential learners about continuing competence activities regarding administrative details, activity specifics and content, biography of the activity deliverer/presenter and participant requirements.

(10) The continuing competence provider shall have established processes for developing, administering and documenting the continuing competence activity.

(c) *Credit.* Credit for continuing competence activities may be awarded in accordance with this subsection. Credit will not be awarded for an activity that duplicates another continuing competence activity or continuing education for which credit is also awarded.

(1) Advanced proficiency designation by the APTA for a physical therapist assistant—15 contact hours to be credited in the renewal cycle during which the certified physical therapist assistant was designated.

(2) Taking the physical therapist assistant practice review tool of the FSBPT, when available—5 contact hours; passing the practice review tool of the FSBPT, when available—an additional 5 contact hours.

(3) Other activities evaluated and approved by the FSBPT—the number of continuing education units set by FSBPT with each continuing education unit worth 10 contact hours of credit.

(4) Becoming a Credentialed Clinical Instructor or a Credentialed Clinical Instructor Trainer as recognized by APTA—1 contact hour for each hour of coursework required to receive the credential, not to exceed 15 contact hours, to be credited in the renewal cycle during which the credential was issued.

(5) Submission of a request to a funding agency for a research grant as a principal or coprincipal investigator—10 contact hours; award of the grant—an additional 10 contact hours.

(6) Service as a grants reviewer—1 contact hour for every 2 hours of review, up to a maximum of 5 contact hours in a single renewal cycle.

(7) Authoring or editing a book dealing with a subject related to the practice of physical therapy—as determined by the Board, not to exceed 15 contact hours, to be awarded in the renewal cycle in which the book was published.

(8) Authoring or editing a chapter of a book dealing with a subject related to the practice of physical therapy—as determined by the Board, not to exceed 10 contact hours, to be awarded in the renewal cycle in which the book was published.

(9) Authoring a published peer-reviewed article relating to the practice of physical therapy—as determined by the Board, not to exceed 10 contact hours, to be awarded in the renewal cycle in which the article was published.

(10) Authoring a published non-peer-reviewed article relating to the practice of physical therapy—as determined by the Board, not to exceed 5 contact hours, to be awarded in the renewal cycle in which the article was published.

(11) Completing a professional self-assessment that is a process for the certified physical therapist assistant to evaluate current professional practice ability, establish goals to improve those abilities, develop a plan to meet those goals and document that the objectives are being accomplished—as determined by the Board, not to exceed a total of 5 contact hours in a single renewal cycle.

(12) Participating in a National physical therapy or interdisciplinary (including physical therapy) organization as an officer or chair of a physical therapy services committee or physical therapy services task force member for at least 1 year—5 contact hours for each full year of participation.

(13) Participation in a State physical therapy or interdisciplinary (including physical therapy) organization as an officer or chair of a physical therapy services committee for at least 1 year—5 hours for each full year of participation.

(14) Participation in a local physical therapy or interdisciplinary (including physical therapy) organization as an officer or chair of a physical therapy services committee for at least 1 year—as determined by the Board not to exceed 5 contact hours in any single renewal cycle.

(15) Participation in a physical therapy professional organization committee involved with physical therapy services for at least 1 year—as determined by the Board not to exceed 5 contact hours in a single renewal cycle.

(16) Other continuing competence activities—as determined by the Board.

[Pa.B. Doc. No. 11-1599. Filed for public inspection September 16, 2011, 9:00 a.m.]

STATE BOARD OF VETERINARY MEDICINE

[49 PA. CODE CH. 31]

Professional Conduct; Notice of Animal Supervision

The State Board of Veterinary Medicine (Board) proposes to amend § 31.21 (relating to Rules of Professional Conduct for Veterinarians) to read as set forth in Annex A.

Effective Date

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

Statutory Authority

Section (5)(1) and (2) of the Veterinary Medicine Practice Act (act) (63 P. S. § 485.5(1) and (2)) authorizes the Board to adopt reasonable rules and regulations of professional conduct appropriate to establish and maintain a high standard of integrity, skills and practice in the profession of veterinary medicine.

Background and Need for Amendments

It has come to the attention of the Board that clients are often unaware that their animals are left unattended in a veterinary facility overnight. The Board believes that the client should be informed of what type of practitioner—veterinarian, certified veterinary technician or veterinary assistant—will attend the client’s animal while it is in the veterinary facility and what level of monitoring will be provided to the client’s animal, especially when the animal is left overnight and on weekends.

Description of Proposed Amendments

The Board proposes to amend § 31.21, Principle 7, regarding a veterinarian’s responsibility to clients and patients, to provide that a veterinarian who assumes the

care and custody of an animal shall inform each client, either orally or in writing, whether a veterinarian, certified veterinary technician or veterinary assistant will be on the premises during the time the animal is at the veterinarian’s facility, including evenings and weekends, as well as what level of monitoring the animal will receive during the time the animal is at the veterinarian’s facility. The term “each client” is used to indicate that a sign posted in the veterinary facility is not sufficient to provide a client with this notification.

Fiscal Impact and Paperwork Requirements

The proposed rulemaking may have a small financial impact on licensees who choose to provide written notice to the public. The proposed rulemaking will not have fiscal impact on the public.

Sunset Date

The Board continuously monitors its regulations. Therefore, a sunset date has not been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 6, 2011, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Professional Licensure Committee (HPLC) and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC). A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Michelle Roberts, Board Administrator, State Board of Veterinary Medicine, P. O. Box 2649, Harrisburg, PA 17105-2649, www.dos.state.pa.us/vet within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

ROBIN J. BERNSTEIN, Esq.,
Chairperson

Fiscal Note: 16A-5725. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 31. STATE BOARD OF VETERINARY MEDICINE

PROFESSIONAL CONDUCT

§ 31.21. Rules of Professional Conduct for Veterinarians.

* * * * *

Principle 7. Responsibility to clients and patients.

* * * * *

(i) A veterinarian who assumes the care and custody of an animal shall inform each client, either orally or in writing, whether a veterinarian, certified veterinary technician or veterinary assistant will be on the premises during the time the animal is at the veterinarian's facility, including evenings and weekends, and what level of monitoring the animal will receive during the time the animal is at the veterinarian's facility.

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[Pa.B. Doc. No. 11-1600. Filed for public inspection September 16, 2011, 9:00 a.m.]
